Supreme Court, U.S.
FILED
AUG 17 1993
OFFICE OF THE CLERK

93-251

No. _____

In The

Supreme Court of the United States

October Term, 1993

HENRY J. GUIDRY, JR. and
HENRY C. MELIUS,

Petitioners,

versus

MISSISSIPPI UTILITY, INC., PETER J. CASANO, M. P. McLEAN, HOBART G. TRUESDELL, ARTIS E. JAMES, JR., ABC INSURANCE COMPANY,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI OF HENRY J. GUIDRY, JR. AND HENRY C. MELIUS

WILLIAM JOSEPH MANION
P. O. Box 1776
Slidell, LA 70459
Telephone: (504) 649-4000

Attorney for Petitioners Henry J. Guidry, Jr. and Henry C. Melius

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

97 PP 5 $10

STATEMENT OF ISSUES

The issues presented by this appeal are:

1. Whether United States Magistrate Judge should have been disqualified where his impartiality might reasonably be questioned. 28 U.S.C.A. § 455(a).

2. Financial expansion of Gex Family commercial interests will be assured materially in absence of any legal challenges. Since Judge Walter J. Gex, III "plays a part" in the future employment of United States Magistrate Judge John M. Roper, would a reasonable man assume that Judge Gex would assert his financial designs upon Judge Roper, however subtle?

3. Plaintiffs have asserted that Judge Roper was influenced by his daily association with United States District Judge Walter J. Gex, III, a prominent large property co-owner in Diamondhead, Hancock County, Mississippi ("Diamondhead"). Chancery Clerk of Court, Hancock County, Mississippi, recordations indicate that Judge Gex is in the private practice of law while a sitting Judge in violation of 28 U.S.C. § 454. See Book 89, pg. 589 – 602, inclusive, relative to sale of property necessary to establish a gambling casino in Diamondhead without a public vote of approval by Diamondhead property owners (App. 36 et seq).

4. The Clerk of Court for the United States District Court, Southern District of Mississippi has issued an Order directing that all official mail addressed to Judge Gex shall not use Post Office Drawer 227, Biloxi, MS 39533 (App. 42).

STATEMENT OF ISSUES – Continued

5. Whether plaintiff's counsel was justified in not "going forward as individual action" when plaintiffs were denied signed Order to amend Complaint and file supplemental pleadings?

6. Why were plaintiffs ordered and limited only to add Purcell Co., Inc. as an additional defendant when money trail of water and sewer services operated by Mississippi Utility Co., Inc. was lodged within Diamondhead Utility, Inc. and Diamondhead Utilities activity?

7. Absence of full amendments to pleadings requested by plaintiffs, litigation was unduly prejudiced by the Court's inability to accord full faith and credit to Mississippi State Tax Case, an intervening event from the date when the Class Action was filed, that sustained the object of the Class plaintiffs' demand.

8. Notwithstanding prerequisites of FRCP Rule 23(a)(4), 28 U.S.C.A., that the representative parties will fairly and adequately protect the interest of the Class, the Court erred in denying fifty-two (52) diverse, non-resident property owners of some 2,000 out-of-state property owners, similarly situated, the representative status to protect the property of some 1,700 local, in-resident Diamondhead property owners. Local residents herein are defined as persons who vote in Mississippi and may receive Mississippi homestead exemption. Diamondhead Country Club and Property Owners Association, Inc. ("POA") made no appearance. The sole argument

STATEMENT OF ISSUES – Continued

asserted by defendants' counsel was that local homesteaders should control the destiny of the Diamondhead community. Should reversal and remand occur, Class Action would not be pursued, but amendment of pleadings, joining additional defendants, is necessary for remaining plaintiffs to go forward with individual action against the defendants.

LIST OF PARTIES

The following are the parties to this proceeding:

Henry J. Guidry, Jr.
Henry C. Melius
Plaintiffs-Petitioners
Represented by
William Joseph Manion
P. O. Box 1776
Slidell, LA 70459

M.P. McLean
Hobart G. Truesdell
Artis E. James, Jr.
Defendants-Respondents
Represented by
Virgil G. Gillespie
1719 Beach Blvd.
#306
Biloxi, MS 39533

Mississippi Utility, Inc.
Peter J. Casano
Defendants-Respondents
Represented by
Walter J. Phillips
P. O. Box 128
Bay St. Louis, MS 39520

There are no parent or subsidiary companies to be listed.

TABLE OF CONTENTS

	Page
STATEMENT OF ISSUES	i
LIST OF PARTIES	iv
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
STATEMENT OF THE CASE	1
ARGUMENT	4
U.S. DISTRICT JUDGE GEX'S 28 U.S.C. § 454 VIOLATION	5-Appendix 72
FAILURE TO GO FORWARD	8
CONCLUSION	9

TABLE OF AUTHORITIES

Page

CASES

Anderson v. City of Bessemer City, 470 U.S. 564, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985) 4

In re Murchinson, 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed. 942 (1955) 5

Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988) 4

Transit Cas. Co. v. Security Trust Co., 396 F.2d 803, cert. denied 393 U.S. 1024, 89 S.Ct. 635, 21 L.Ed.2d 568 (1969) 9

U.S. v. Delaware & H. Co., 164 F. 215 (Circuit Court, E.D. Pa. 1908) 5

STATUTES

U.S. Supreme Court Rule 13.1 1

28 U.S.C. § 454 ..... 5, 9

28 U.S.C. § 455(a) 3

28 U.S.C. § 631(a) 4

28 U.S.C. § 636(c)(1) 1

28 U.S.C. § 636(c)(3) 1

28 U.S.C. § 751(a) 4

Federal Rules of Civil Procedure

Rule 15, 28 U.S.C. 8

Rule 16(b) 8, 9

Rule 41(b) 9

OPINIONS BELOW

Consent to proceed before a United States Magistrate Judge pursuant to the provisions of 28 U.S.C.A. § 636(c)(1) with entry of final judgment denying Class certification and upon entry of that aforesaid judgment, plaintiffs may appeal to the United States Court of Appeals for the Fifth Circuit. 28 U.S.C.A. § 636(c)(3).

Motions of all parties for sanctions, penalties, damages, counter claims and attorney fees have been denied. Virgil G. Gillespie was awarded costs in sum of $202.50, duly paid. Appeals dismissed.

STATEMENT OF JURISDICTION

A Petition for a Writ of Certiorari to review a Judgment in any case, civil or criminal, entered by a United States Court of Appeals, shall be deemed in time when it is filed with the Clerk of the United States Supreme Court within ninety (90) days after the entry of the Judgment. U.S. Sup.Ct. Rule 13.1, 28 U.S.C.A.

STATEMENT OF THE CASE

Purcell Company, Inc. ("Purcell") (formerly Diamondhead Properties, Inc. and Diamondhead Corporation) unitized the family holdings and claims of Jourdan, Gex, Moran, Charles Favre, John B. Ladner and Wichton to form Diamondhead residential/resort community in Hancock County, Mississippi.

North/South division of Diamondhead occasioned upon construction of U.S. Interstate Highway 10 ("I-10"), ingress and egress located at Exit 16. Gex Family Interests owned three-fourths (3/4) of property adjacent to and surrounding Exit 16.

Purcell failed to comply with Mississippi Bureau of Pollution Control ("PC") orders to furnish adequate and safe water and sewer services in Diamondhead. Mississippi Utility, Inc. ("MUI") and Peter J. Casano ("Mr. Casano") purchased stock of water and sewer services in Diamondhead from Purcell. Upon Mr. Casano's delay to conform to PC orders, a statutory Water and Sewer District ("District") was chartered. Mr. Casano sold MUI stock, Certificate of Convenience and Necessity, Facilities and Equipment to District.

On February 16, 1990, fifty-four (54) diverse, non-resident property owners who vote and receive homestead exemptions from states *other than* Mississippi, filed a Class Action, demanding that persons *other than* Diamondhead property owners pay for compliance with PC orders to construct, service and maintain a safe and adequate water and sewer system in Diamondhead.

Class Action plaintiffs' counsel is William Joseph Manion, who enjoys pro hac vice status without compliance with Local Rule 1 to associate Mississippi counsel (App. 12). At recorded and transcribed status conference of May 9, 1990, United States Magistrate Judge John M. Roper ("Judge Roper") agreed to timely amendments of Complaint to add additional party defendants, reserving the right of defendants to file a motion to dismiss. See Record, pg. 828, et seq., Docket Entry No. 91.

Further proceedings were recessed pending a 16 month delay in establishing domicile of Purcell and Purcell Trust to be the State of Mississippi rather than subject to the Bankruptcy Court for the Southern District of New York's jurisdiction.

On September 9, 1991, plaintiffs were directed to amend Complaint and add *only* Purcell as a party defendant.

On October 4, 1991, plaintiffs countered and filed motions for leave to supplement Complaint and add Purcell, Diamondhead Utility Co., Inc. and Diamondhead Utilities as party defendants with an attached Order for directed citation, summons and service of process upon those proposed defendants (App. 18-23).

Judge Roper never signed the aforesaid Order filed October 4, 1991, and the entire filing of October 4, 1991 was placed in a secret miscellaneous file in the Clerk of Court's office (App. 31-33) and stamped "HOLD" by personnel of the clerk's office (App. 18-23).

At the hearing on Class certification on November 13, 1991, plaintiff's counsel opened and made an oral motion requesting disqualification of Judge Roper, 28 U.S.C. § 455(a). Denying the Motion on February 27, 1992, Class Action was dismissed without prejudice, but Class was ordered to amend pleadings within twenty (20) days and "go forward as an individual action in which all reference to Class Action and mention of representation of absent parties being stricken." (App. 7-9)

Interlocutory appeal was dismissed on May 12, 1992 (App. 10).

Being denied to effect October 4, 1991 filings (App. 18-23), plaintiffs did not go forward, and Complaint filed by plaintiffs Guidry, Hugo, Melius and Peterson was dismissed with prejudice to proceed individually, but without prejudice to proceed as Class members if determined that Class Action is appropriate (App. 14-17).

Material matters discovered post-Judgment were dismissed by the Court (App. 29-31).

An appeal was noticed. Plaintiffs' October 4, 1991 filings secreted in the Clerk of Court's miscellaneous file was discovered October 20, 1992 (App. 31-33).

Appeal decreed a summary calendar dismissal May 21, 1993 (App. 34-35).

ARGUMENT

Judgments of Courts below are clearly erroneous. *Anderson v. City of Bessemer City,* 470 U.S. 564, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985), because U.S. Magistrate Judge Roper should have disqualified himself. *Liljeberg v. Health Services Acquisition Corp.,* 486 U.S. 847, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988.)

Each District Court Judge may appoint a clerk who shall be removed by the Court at will. 28 U.S.C.A. § 751(a). United States Magistrate Judges are appointed by District Court Judges. 28 U.S.C.A. § 631(a).

Employment status of Judge Roper is extrajudicial in this litigation. He has received the endorsement and support of U.S. District Judge Walter J. Gex, III ("Judge Gex") for his reappointment to employment as U.S. Magistrate

Judge, as well as support for unsuccessful quest of appointment to permanent tenure on the Federal Bench as a Federal District Judge.

For reasons stated herein, it is reasonable to assume that Judge Gex imposed his will and desires for financial reasons, however subtle they may be, on Judge Roper.

Due process guarantees a fair trial to all. *In re Murchinson*, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955).

U.S. DISTRICT JUDGE GEX'S 28 U.S.C. § 454 VIOLATION

Any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor. June 25, 1948, c. 646, 62 Stat. 908.

"When a lawyer becomes a federal judge, the law, by R.S. § 713, forbids him the right to use his property and practice his profession. Such prohibitions are not restrictions of liberty or deprivation of property. They are the law's aids to public service. They make the public servant have an eye single to the public duty, voluntarily assumed, and in forbidding judges to act in a dual capacity, the law but throws around them the time-proven safeguard of faithful service, that "no man can serve two masters." *U.S. v. Delaware & H. Co.*, 164 F. 215 (Circuit Court, E.D. Pa. 1908)."

Recordations in Chancery Courthouse, Hancock County, Mississippi, indicate Judge Gex used federal court facilities to conduct his private practice of law.

Option agreement dated January 6, 1993, recorded in Book 89, p. 589 (App. 36-39) states in § 4:

> "*Exercise of Option.* If Buyer elects to exercise the option to purchase, notice of such election shall be given to Seller in writing, and such notice will be considered timely given if sent by certified U.S. mail, postage prepaid, addressed to Seller provided in ¶ 8 of this Option . . .
>
> 8. *NOTICES*: All notices consents and other communications hereunder shall be in writing and shall be personally delivered or mailed by registered or certified U.S. Mail, return receipt requested, postage prepaid at the following addresses: If to the *Seller*, Gaynel Gex Boh, Walter J. Gex, III, and Joseph W. Gex, *P. O. Drawer 227, Biloxi, Mississippi 39533;* if to Buyer, Purcell Co., Inc., 4402 East Aloha Drive, Suite 4, Diamondhead, Mississippi 39525, Attention: Artis E. James, Jr., President, or to any such other addresses as may be furnished by Seller or Buyer in writing."

P. O. Drawer 227 is the official address of U.S. District Judge Walter J. Gex, III, Southern District of Mississippi. Mail for Gaynel Gex Boh and Joseph W. Gex should not be addressed to P. O. Drawer 227. Additionally, Joseph W. Gex is a Mississippi licensed attorney with offices located in Bay St. Louis, MS, a few miles from Judge Gex's home and it is submitted that someone other than Judge Gex should have been designated agent for Gex Family interests.

It is conceded that federal judges use federal frank U.S. Post Office boxes and drawers to avoid terrorism and letter bomb attacks, but such privilege does not

extend to Walter J. Gex, III's private practice of law while a sitting U.S. District Judge.

The executed Option ultimately became the property of Mississippi Gaming Corporation for gambling activity without 85% approval rate of Diamondhead property owners. (App. 59). As of June 1, 1993, the Clerk for the U.S. District Court, Southern District of Mississippi, discontinued the use of post office boxes relative to official mail addressed to Judge Gex (App. 42). Notwithstanding, Addendum to Option Agreement recorded in Book 89, p. 589, reflects no change in Gex notice requirement as set forth in January 6, 1993 Option Agreement (App. 36-41).

> "WHEREAS, Buyer and Seller have heretofore entered into an Option Agreement dated as of January 6, 1993, recorded in Book BB-83 at Pages 769-773 in the Office of the Chancery Clerk of Hancock County, Mississippi, known as parcel "A"; and, Buyer and Seller are desirous of extending the terms of said Options;
>
> NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 ($10.00), cash in hand paid together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer agree to extend the terms of the aforesaid Option on parcel "B" until 5:00 p.m. on July 19, 1993; and to extend the term of the aforesaid Option on parcel "A" until 5:00 p.m. on July 19, 1993, or until Buyer exercises its option on parcel "B", whichever occurs first. All other terms and conditions of said Option shall remain in full force and effect. (App. 54)."

Further, it is noted that Clerk of Court has not published any notice that U.S. Post Office Drawer 1164, Biloxi, MS 39533, issued to U.S. Magistrate Judge Roper; and, P. O. Box 1930, Gulfport, MS 39502, issued to U.S. Senior Judge Dan M. Russell, Jr.; and, P. O. Box 1389, Biloxi, MS 39533, issued to U.S. District Judge David C. Bramlette have been discontinued.

The basic complaint against Judge Gex is that he committed a serious misdemeanor and misuse of his authority. Plaintiffs herein have filed a complaint with Judicial Council for the U.S. Court of Appeals for the Fifth Circuit; an informational copy of same is found at App. 72.

FAILURE TO GO FORWARD

Once District Court has filed Scheduling Order establishing time table for amending pleadings, motion to amend is governed by Rule 16(b) and not F.R.C.P. Rule 15, 28 U.S.C.A. Rule 16(b) limits time to join parties and amend pleadings. An Order can only be changed upon showing of good cause or extraordinary circumstances.

Good cause is shown when plaintiff's counsel file Motion to Amend Complaint and add Purcell, DUI and Diamondhead Utilities as parties defendant. Motion, filed on October 4, 1991, was accompanied by Order submitted to Judge Roper for approval. Order was not signed, and Summons, together with copies of Complaint, were filed in the Clerk's office. Without notification, the Clerk's office secretly filed Summons and copy of Complaint and

marked them *"Hold"*. Record, Vol. VI, pages 1428-36 (App. 20).

With full knowledge of the October 4, 1991 Order filing, Judge Roper issued a new Order on November 1, 1991 to amend pleadings designating Purcell solely as an additional defendant. Plaintiffs did not comply because it is plaintiff's right to designate parties defendant, and those parties can only be dismissed after an evidentiary hearing.

The issue of plaintiffs' failure to go forward contrary to schedule orders was based on good cause under extraordinary circumstances. Failure to comply with Rule 16(b), 28 U.S.C.A., should be vacated without prejudice. F.R.C.P. Rule 41(b), 28 U.S.C.A., *Transit Cas. Co. v. Security Trust Co.*, 396 F.2d 803; cert denied, 393 U.S. 1024, 89 S.Ct. 635, 21 L.Ed.2d 568 (1969).

CONCLUSION

There is recorded evidence that private practice of law was exercised by U.S. District Court Judge Walter J. Gex, III in violation of 28 U.S.C. § 454. It is reasonable that there was a compulsion for Judge Gex to assert influence upon U.S. Magistrate Judge Roper to dismiss Class Action.

Further, it is reasonable to assume that Clerk of Court did not, without direct orders from someone, secret and mark "HOLD" plaintiffs' Amending Complaint accompanied by unsigned Order, Summons and Citation for Service of Process upon additional defendants, Purcell

Co., Inc., Diamondhead Utility, Inc. and Diamondhead Utilities.

Under the circumstances, a fair hearing was not possible. *Murchinson, supra.* It is urged that Judgments below be vacated to reflect dismissal of all Class Action plaintiffs without prejudice; and, allow any of them to join litigation going forward individually against the defendants designated in Amending Complaint with William Joseph Manion, pro hac vice, serving plaintiffs without associating Mississippi counsel; and, all future litigation to be heard by an out-of-district judge sitting by designation.

Respectfully submitted,

WILLIAM JOSEPH MANION
P. O. Box 1776
Slidell, LA 70459
(504) 649-4000
La. Bar No. 9089

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

E.E. JEANSONNE, ET AL

PLAINTIFFS

VS. CIVIL ACTION NO. S90-0094(BR)

MISSISSIPPI UTILITY INC.,
ET AL

DEFENDANTS

Filed February 7, 1992

MEMORANDUM OPINION

This action comes before this Court by the consent of the parties pursuant to 28 U.S.C. 6.36(c).

This cause came on for hearing before this Court on motion of the plaintiffs, E.E. Jeansonne, et al, for certification of a class action pursuant to Rules 23(b)(1)(A), 23(b)(1)(B), and 23(b)(2) of the Federal Rules of Civil Procedure.[1] The Court, having duly considered the arguments adduced at the hearing of this matter, the briefs of counsel, and otherwise being fully advised in the premises, concludes as follows:

---

[1] At the hearing of this matter, counsel for the plaintiff also suggested that this claim might be maintained under Rule 23(b)(3). This Court notes that the motion for class certification filed by the plaintiffs fails to reveal under which of the Rule 23(b) requirements they are seeking certification.

Facts

This action involves the claims of a group of real property owners with property in the Diamondhead resort community located near Bay St. Louis in Hancock County, Mississippi. The complaint which initiated this action was filed by some fifty three persons who purported to be members of a class of persons suffering injury caused by the defendants.

The plaintiffs in this litigation seek recovery on a theory that the developer of Diamondhead, Purcell Co., Inc. failed to provide adequate water and sewer services, which eventually resulted in the formation of a statutory Diamondhead Water and Sewer District. The plaintiffs allege that the District has incurred debt through the issuance of revenue bonds which were issued in order to fund the necessary upgrade in services.[2]

Rule 23

In order for a class to be certified under Rule 23, the potential plaintiffs must satisfy a two step inquiry. First, the action must satisfy all four of the prerequisites mandated by subsection (a) of the Rule. These requirements are:

---

[2] This opinion is limited to the sole issue of the certification of a class under Rule 23. This Court will not address the issues of the existence of diversity jurisdiction, standing, joinder of necessary parties, or the alleged conflict of interest raised by the fact that the plaintiff's counsel is potentially a class member in this action.

> (1) the class is so numerous that joinder of all claims is impracticable,
>
> (2) there are questions of law or fact common to the class,
>
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and
>
> (4) the representative parties will fairly and adequately protect the interests of the class.

Federal Rules of Civil Procedure Rule 23.

If the group is able to make the requisite showing under part (a) of the rule, it must then satisfy at least one of the three categories of actions identified in subsection (b) of Rule 23.

Discussion

Numerosity

Rule 23(a)(1) provides that certification is appropriate "only if the class is so numerous that joinder of all members is impracticable." The Fifth Circuit in *Zeedman v. J. Ray McDermott & Co., Inc.*, 651 F.2d 1030, 1038 (5th Cir. 1981), stated that "[t]he proper focus [under Rule 23(a)(1)] is not on numbers alone, but on whether joinder of all members is practicable in view of the numerosity of the class and all other relevant factors." (citing *Philips v. Joint Legislative Committee*, 637 F.2d 1014, 1022 (5th Cir. 1981)). *See also Garcia v. Gloor*, 618 F.2d 264, 267 (5th Cir. 1980), *cert. denied*, 449 U.S. 1113 (1981). In further addressing the numerosity requirement, the *Garcia* court stated:

> "Thus, a number of facts other than the actual or estimated number of purported class members may be relevant to the numerosity question; these include, for example, the geographical dispersion of the class, the ease with which class members may be identified, the nature of the action, and the size of each plaintiff's claim."

Garcia, 618 F.2d at 267.

All of the persons who allegedly sustained damage as a result of the defendant's acts or omissions have been identified and approached by the attorney for the plaintiffs.[3] This group totaled some eleven hundred and thirty-three persons, according to counsel for the plaintiff.[4] Of those eleven hundred and thirty-three, only fifty-three joined in the original complaint seeking to pursue the class action. Since the time of the filing, forty-nine of those persons have withdrawn from the action, leaving only four viable plaintiffs.[5] Having considered the foregoing, this Court is of the opinion that the numerosity requirement has not been satisfied by the remaining four potential class members in this action.

---

[3] The plaintiffs allege in paragraph 25 of their complaint that "all Diamondhead property owners have experienced a loss in the value of their property".

[4] Counsel for the defendants suggests that some fifteen hundred real property owners reside in Diamondhead.

[5] At the hearing of this matter, counsel for the plaintiffs suggested that the class be limited to persons who own real property in Diamondhead, but who reside out of state. This Court, however, is not satisfied that the alleged injuries to those persons in any way differ from those of real property owners who reside in the state of Mississippi year-round.

Commonality and Typicality.

Rule 23(a)(2) provides that certification is proper only where "there are questions of law or fact common to the class." It is important to note that this provision does not require that all the questions of law and fact raised by the dispute be common. *Johnson v. American Credit Co. of Georgia*, 581 F.2d 526, 532 (5th Cir. 1978). However, it has been held that more than one issue of law or fact must be common to members of the class. *Stewart v. Winter*, 699 F.2d 328, 335 (5th Cir. 1982).

Rule 23(a)(3) provides that certification must be denied unless the "claims or defenses of the representative parties are typical of the claims or defenses of the class."

As a practical matter the commonality and typicality [(a)(3)] requirement tend to merge. *General Telephone Co. v. Falcon*, 457 U.S. 147 n.13 (1982). The Supreme Court further stated that "[b]oth serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiffs' claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Id.* The four remaining plaintiffs in this action may have common questions of law or fact, but counsel for the plaintiff has failed in demonstrating them to the satisfaction of this Court. The complaint in this action makes broad allegations of injury caused by the acts or omission of the Purcell, Co., who is not a named defendant in this action. Absent a showing that the plaintiffs have common questions of law or fact arising from the acts or omissions of

the named defendants, this Court is at a loss in finding commonality or typicality of claims. Therefore, this Court is of the opinion that the plaintiffs has failed in demonstrating questions or law or fact common to all the plaintiffs and that the claims of the plaintiffs are typical.

Adequacy of Representation.

Rule 23(a)(4) provides that a class will not be certified unless the representative parties will fairly and adequately protect the interest of the class. As the court held in *Eisen v. Carlisle and Jacquelin*, 391 F.2d 555 (2nd Cir. 1968) (later proceedings inapposite), the focus on adequacy of representation prerequisite is not only upon the counsel but also upon the representative class member. *See also In re Goldchip Funding Co.*, 61 F.R.D. 592, 594 (M.D. Pa. 1974).

In this action, counsel for the plaintiff proposes a four member class in a field of some eleven to fifteen hundred potentially injured real property owners. At the hearing of this matter, counsel for the plaintiff suggested that the class be limited to out of state property owners and that the four remaining plaintiffs were such, but he put on no proof as to their ability to adequately represent the proposed class, however defined. As a result, this Court finds that the plaintiffs have failed to demonstrate the ability of the proposed representatives to adequately represent the class as a whole.

Having found that the plaintiffs have wholly failed under Rule 23(a) to meet the prerequisites of class certification, and having further reviewed the broad allegations of the plaintiffs in this action, this Court is of the

opinion that further laboring to apply Rule 23(b) would be futile.

Conclusion

After a full review of the plaintiffs' motion for certification of a class action pursuant to Rule 23, the Court finds that plaintiffs have not satisfied the prerequisites mandated by the Rule. Therefore, the motion of plaintiffs for class certification is denied.

Counsel for the defendants is directed to submit an Order in conformity with the foregoing opinion within ten days of the date of its entry.

DATED THIS the 7th day of February, 1992.

[John M. Roper]
UNITED STATES
MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

E.E. JEANSONNE, ET AL

PLAINTIFFS

VERSUS CIVIL ACTION NO. S90-0094(BR)

MISSISSIPPI UTILITY INC.,
ET AL

DEFENDANTS

Filed February 27, 1992

JUDGMENT

This cause came on to be heard before the undersigned Magistrate Judge by consent of the parties, pursuant to 28 U.S.C. 636(c). The cause came on for hearing before the Court on Motion of the Plaintiffs, E.E. JEANSONNE, ET AL, for certification of a class action pursuant to Rules 23(b)(1)(A), 23(b)(1)(B), and 23(b)(2) of the Federal Rules of Civil Procedure. The Court having duly considered the arguments adduced at the hearing of this matter, the briefs of counsel, and otherwise being fully advised in the premises, finds that the Plaintiff's Motion for Certification of a Class Action, pursuant to said Rule 23, should not be granted for the reason that the Plaintiffs have not satisfied the prerequisite mandated by said Rule 23.

The Court therefore finds that the Motion of the Plaintiffs for Class Certification should be denied for failure to meet the subdivision (a) prerequisites, and the Plaintiffs are hereby allowed twenty (20) days time from and after the signing hereof in which to amend their Complaint to strike all references to the class action and all representation of absent persons and conform their Complaint to an individual action on behalf of each individual Plaintiff. IT IS THEREFORE:

ORDERED and ADJUDGED that the Plaintiff's Motion for Certification as a Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure is overruled, and the Motion of the Plaintiffs for such Class Certification be, and the same hereby is, denied. IT IS FURTHER:

ORDERED and ADJUDGED that the Plaintiffs be, and they are hereby granted twenty (20) days time within which to amend the Complaint to go forward as individual actions in which they shall strike all references to class action and all mention to representation of absent persons, failing in which, upon appropriate motion made by the Defendants, this cause shall be dismissed as to the Plaintiffs.

SO ORDERED and ADJUDGED on this, the 26th day of February, 1992.

[John M. Roper]
UNITED STATES
MAGISTRATE JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7144

Filed May 12, 1992

E.E. JEANSONNE, ET AL.,

Plaintiffs,

HENRY F. GUIDRY, JR.,
FREDERICK J. HUGO,
DR. HENRY C. MELIUS, and
CAPT. GEORGE J. PETERSON, III,

Plaintiffs-Appellants,

versus

MISSISSIPPI UTILITY, INC., ET AL.,

Defendants-Appellees

Appeals from the United States District Court
for the Southern District of Mississippi

Before JOLLY, DAVIS, and SMITH, Circuit Judges.

BY THE COURT:

IT IS ORDERED that appellee's motion to dismiss appeal is [granted].

IT IS FURTHER ORDERED that appellee's motion for imposition of Rule 38, damages and double costs is hereby [denied].

[Davis]

[Smith] [Jolly]

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

E.E. JEANSONNE, ET AL

PLAINTIFFS

VS. CIVIL ACTION NO. S90-0094(BR)

MISSISSIPPI UTILITY INC.,
ET AL

DEFENDANTS

Filed July 13, 1992

ORDER

This cause came on before this Court on motion of the plaintiffs, E.E. Jeansonne, et al., pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, to vacate a judgment previously rendered by this Court. The Court, upon consideration of the motion and being otherwise fully advised in the premises, finds that the motion to vacate this Court's judgment, denying certification of class action, is not well taken and shall be denied. It is therefore,

ORDERED and ADJUDGED, that the plaintiff's motion to vacate the judgment rendered by this Court on February 27, 1992, be, and is hereby, denied.

SO ORDERED AND ADJUDGED, this the 13th day of July, 1992.

[John M. Roper]
UNITED STATES
MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
SOUTHERN DISTRICT OF MISSISSIPPI
BILOXI, MISSISSIPPI

August 19, 1992

W.J. Manion, Esq.
P.O. Box 1776
Slidell, LA 70459

Filed August 24, 1992
In Record Page 1308
Docket No. 171

Re: E.E. Jeansonne, et al., v.
Mississippi Utility, Inc., et al.
Civil Action No. S90-0094

Dear Mr. Manion:

Our records indicate that you are attorney of record in the captioned matter admitted *pro hac vice*. Pursuant to the order entered by this court on April 1, 1992, we have assigned to you a bar number, 40008, to be used in all pleadings and correspondence you file with this court. If we can provide additional information in this matter, please let us know.

Yours very truly,

[J. T. Noblin]

J.T. Noblin, Clerk

JTN:ks

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

E.E. JEANSONNE, ET AL

PLAINTIFFS

VS. CIVIL ACTION NO. S90-0094(BR)

MISSISSIPPI UTILITY INC.,
ET AL

DEFENDANTS

Filed August 31, 1992

ORDER

This cause comes before the Court on motion of the Plaintiff for "release of correspondence". The Court, having reviewed the motion and attached affidavit, is of the opinion that the motion is not well taken and shall be denied. It is therefore,

ORDERED and ADJUDGED, that the Plaintiff's motion for "release of correspondence" be, and is hereby, denied.

SO ORDERED AND ADJUDGED, this the 31st day of August, 1992.

[John M. Roper]
UNITED STATES
MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

E.E. JEANSONNE, ET AL

PLAINTIFFS

VS. CIVIL ACTION NO. S90-0094(BR)

MISSISSIPPI UTILITY INC.,
ET AL

DEFENDANTS

Filed Sep. 25, 1992

ORDER

This cause came before the Court on September 24, 1992 for final hearing on all outstanding motions of the parties. Upon consideration of the motions, briefs, and argument of the parties, this Court concludes as follows:

On October 4, 1991 the plaintiffs filed a motion for leave to file a "supplemental" complaint adding as a defendant, the Purcell Company. On November 1, 1991 this Court granted the plaintiff's motion for leave to file the amended complaint at a Pretrial/Settlement Conference, as evidenced by the minute entry order of that date. At the same conference the plaintiff was directed to present an Order allowing the amendment.

More than three months later, on February 7, 1992, this Court entered a memorandum Opinion denying the plaintiffs' motion for class certification. At no time since the November 1, 1991 conference have the plaintiffs submitted an Order allowing the amendment, filed an Amended Complaint, or otherwise prosecuted this action against Purcell. This Court is of the opinion that any

attempt to bring in Purcell at this juncture would be completely untimely.

The Plaintiffs also have pending a second motion to reconsider this Court's Judgment of February 27, 1992. Upon review of the Memorandum Opinion of February 7, 1992, the Judgment of February 27, 1992, and the previous Order of this Court denying reconsideration, this Court is of the opinion that the Plaintiffs' latest motion for reconsideration, dated July 17, 1992, is without merit and shall be denied.

On September 23, 1992, one day prior to the sixth and final hearing on this matter, the Plaintiffs moved this Court to continue the hearing to a later date. At the final hearing, this Court denied the Plaintiffs' motion, finding it to be without merit.

Prior to the September 24, 1992 hearing, the Defendants, Artis E. James, Jr., M.P. McLean, and Hobart G. Truesdale, moved this Court to impose sanctions against the Plaintiffs and/or their attorney, pursuant to Rule 11 of the Federal Rules of Civil Procedure, and to award attorney's fees, pursuant to rule 15(b) of the Uniform Local Rules of the United States District Courts for the Northern and Southern Districts of Mississippi.[1]

---

[1] These Defendants previously filed a Counter-claim against the Plaintiffs alleging abuse of process and requesting the award of sanctions. In the instant motion, the Defendants request that the Counter-claim be withdrawn and that this motion be substituted in its stead. The Court is of the opinion that the Defendants' request is well taken. Consequently, the Defendants' Counter-claim is withdrawn and the instant motion will be considered by the Court.

Similarly, the Defendants, Mississippi Utility, Inc. and Peter J. Casano, moved this Court to award attorney's fees pursuant to Local Rule 15(b). After considering the briefs, responses, and oral argument of the parties, this Court is of the opinion that the Defendants, James, McLean, and Truesdale's, motion for Rule 11 sanctions is not well taken and shall be denied. Further, the Court is of the opinion that the motion for attorney's fees pursuant to Local Rule 15(b) filed by all Defendants is not well taken and shall be denied.

Throughout the course of this action, the Plaintiffs have filed various motions for sanctions and costs. Most recently, at the September 24th hearing, the Plaintiff moved the Court *ore tenus* for sanctions against the Defendants, James, McLean, and Truesdale, alleging abuse of process and negligence by these Defendants in filing the Counter-claim. This Court is of the opinion that the Plaintiffs are not entitled to any costs or sanctions, therefore the *ore tenus* motion, and all other motions by the Plaintiffs requesting costs or sanctions, shall be denied. It is therefore,

ORDERED and ADJUDGED, that the Plaintiff's second motion for reconsideration of the Judgment rendered by this Court on February 27, 1992, be, and is hereby, denied. It is further,

ORDERED and ADJUDGED, that the Defendants, James, McLean, and Truesdale's, motion for Rule 11 sanctions be, and is hereby, denied. It is further.

ORDERED and ADJUDGED, that the motion of all Defendants, James, McLean, Truesdale, Mississippi Utilities, Inc., and Casano, for an award of attorney's fees

pursuant to Local Rule 15(b) be, and is hereby, denied. It is further,

ORDERED and ADJUDGED, that all Defendants, James, McLean, Truesdale, Mississippi Utilities, Inc., and Casano, as prevailing parties, are entitled to the award of statutory costs incurred in the defense of this suit, and should file a bill of cost with the clerk of court. It is further,

ORDERED and ADJUDGED, that the Plaintiffs' *ore tenus* motion for sanctions against the Defendants, James, McLean, and Truesdale of September 24, 1992, alleging abuse of process and negligence by these Defendants in filing the Counter-claim and all other motions for sanctions or costs by the Plaintiff be, and are hereby, denied.

SO ORDERED AND ADJUDGED, this the 24th day of September, 1992.

[John M. Roper]
UNITED STATES
MAGISTRATE JUDGE

A TRUE COPY,
I HEREBY CERTIFY.
J.T. Noblin, CLERK
By:

[signed]
Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION AT BILOXI, MS

E.E. JEANSONNE, ET AL	*	CIVIL ACTION
Plaintiffs	*	NO. S90-0094(R)
VERSUS	*	JOHN M. ROPER
MISSISSIPPI UTILITY INC., ET AL	*	U.S. MAG. JUDGE
Defendants	*	

****

Filed October 4, 1991

MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT AND ADD DEFENDANTS
(F.R.C.P., Rule 15(d)

Class plaintiffs, through their counsel pro hac vice, move the Court:

1. For entry of an Order pursuant to Rules 19, 20 and 21 of the Federal Rules of Civil Procedure to add as party defendants in this case: Purcell Co., Inc. ("Purcell"), Diamondhead Utility Co., Inc. ("DUC") and Diamondhead Utilities ("Utilities")and directing service of process upon them; and

2. For entry of an Order pursuant to Rule 15(d) of the Federal Rules of Civil Procedure permitting Class plaintiffs to file and to serve upon defendants a Supplemental Complaint setting forth certain events that have occurred since the filing of the original Complaint herein. In support of their Motion, Class plaintiffs state:

A. Purcell, DUC and Utilities are indispensable parties to this action.

B. There exists a common question of law or fact as to all defendants.

C. Adjudication of Purcell Co., Inc. v. Mississippi State Tax Commission, 569 So.2d 297 (Miss. Oct. 17, 1990) has an impact on the claims asserted against defendants to their detriment.

D. Added defendants are subject to service of process, and their joinder will not deprive the Court of jurisdiction over subject matter of this Class Action.

E. Attached hereto and made a part hereof is a copy of the Supplemental Complaint proposed to be filed if this Motion is granted.

WHEREFORE, the Supplemental Complaint asserts against the defendants a right to relief arising out of the same series of occurrences and presents questions of law and fact common to all defendants; therefore, Class plaintiffs ask that their Motion be granted and that an Order issue as prayed for.

Respectfully submitted,

/s/ [W. J. Manion]

Counsel Pro Hac Vice
for Class Plaintiffs
P. O. Box 1776
Slidell, LA 70459
(504) 649-4000
La. Bar No. 9089

September 9th, 1991

CERTIFICATE

I certify that a copy of the foregoing pleading has been forwarded to:

Virgil G. Gillespie
1900 24th Avenue
Gulfport, MS 39501

Walter J. Phillips
P. O. Box 128
Bay St. Louis, MS 39520

/s/ [W. J. Manion]
W. J. MANION

HOLD

A TRUE COPY, I HEREBY CERTIFY. J. T. Noblin, CLERK

By:

Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN (BILOXI) DISTRICT OF MISSISSIPPI

E E Jeansonne, et al
Class Plaintiffs

V.

SUMMONS IN A CIVIL ACTION
Case Number:
S- 90- 0094 (R)

Mississippi Utility, Inc.
et al Defendants

TO: Diamondhead Utilities through anyone authorized as agent to accept service of process at 100 Construction Road, Bay St. Louis, MS 39520

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon PLAINTIFF'S ATTORNEY: [name and address]

W J Manion P O Box 1776 Slidell, La 70459

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

A TRUE COPY, I HEREBY
CERTIFY.
J. T. Noblin, CLERK
By:

_____
Deputy Clerk

J. T. NOBLIN
CLERK

10-04-91
DATE

C. O'Barr
BY DEPUTY CLERK

UNITED STATES DISTRICT COURT
SOUTHERN (BILOXI) DISTRICT OP MISSISSIPPI

E E Jeansonne, et al
Class Plaintiffs

V.

SUMMONS IN A CIVIL ACTION
Case Number:
S- 90- 0094 (R)

Mississippi Utility, Inc.
et al Defendants

TO: Purcell Co., Inc. through C T Corporation 118 North Congress Street Jackson, Ms. 39201

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon PLAINTIFF'S ATTORNEY: [name and address]

W J Manion P O Box 1776 Slidell, La 70459

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

A TRUE COPY, I HEREBY CERTIFY.
J. T. Noblin, CLERK
By:

_____
Deputy Clerk

J. T. NOBLIN
CLERK

10-04-91
DATE

C. O'Barr
BY DEPUTY CLERK

UNITED STATES DISTRICT COURT
SOUTHERN (BILOXI) DISTRICT OP MISSISSIPPI

E E Jeansonne, et al
Class Plaintiffs

V.

SUMMONS IN A CIVIL ACTION
Case Number:
S- 90- 0094 (R)

Mississippi Utility, Inc.
et al Defendants

TO: Diamondhead Utility Co Inc through Peter J. Casano 2450 Iki Place Bay St. Louis, MS 39520

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon PLAINTIFF'S ATTORNEY: [name and address]

W J Manion P O Box 1776 Slidell, La 70459

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

A TRUE COPY, I HEREBY
CERTIFY.
J. T. Noblin, CLERK
By:

_____
Deputy Clerk

J. T. NOBLIN
CLERK

10-04-91
DATE

C. O'Barr
BY DEPUTY CLERK

Office of
VIRGIL G. GILLESPIE
Attorney at Law

October 24, 1991

Filed October 28, 1991

Honorable John M. Roper
United States Magistrate
P. O. Drawer 1164
Biloxi, Mississippi 39533

RE: E.E. JEANSONNE, ET AL
VERSUS
ARTIS E. JAMES, JR., ET AL
UNITED STATES DISTRICT COURT
CAUSE NUMBER S90-0094(R)

Dear Judge Roper:

I hand you herewith the original and one (1) copy of the Brief to be submitted on behalf of M.P. McLean, Hobart G. Truesdell, and Artis E. James, Jr., Defendants, in opposition to class action status in the above matter.

I am also submitted an Affidavit made by myself in support of this Brief and the position of the Defendants opposing class action status in this matter.

Mr. Manion has filed a Motion to join Purcell Company as a party. I have no objection to Purcell being joined as a party in this matter, and I do not want the joinder of Purcell to delay your Honor's ruling on class action status. I do not believe that Purcell's entry into the case will affect the Court's determination in that regard at all. As soon as Mr. Manion presents me with an order, I will approve the same and file an answer on behalf of Purcell with no requirement of any additional process or proceedings.

Pursuant to Rule 7 of the Local Rules of Court, I am not filing this Brief or Affidavit with the Clerk, but I am sending a copy of this letter to the Clerk for filing.

Yours very truly,

[Virgil G. Gillespie]
VIRGIL G. GILLESPIE
VGG/jpc
Enclosures:
cc: Honorable Carl Joffe
Honorable Walter James Philips
Honorable W.J. Manion
Honorable J.T. Noblin, Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI SOUTHERN DIVISION

E.E. JEANSONNE, ET AL PLAINTIFFS

VS. CIVIL ACTION NO. S90-0094(BR)

MISSISSIPPI UTILITY INC., ET AL DEFENDANTS

Filed September 25, 1992

JUDGMENT

THIS CAUSE came on to be heard on Motion made by the Plaintiffs to dismiss E.E. JEANSONNE, ANTHONY FORTIER, J.M. CARRIERE, JOHN C. BARBER, SR., JACK A. BARNABY, JOSEPH F. BAROCO, JR., CLAYTON B. BARRE, F.J. ADAM, K.D. BACKSEN, JOHN Q. ADAM, D.J. BAGERT, MICHEL ALDEN, R.E. BAILLARGEON, H.F. ALEXANDER, E.M. BAKER, R.F. ALEXANDER, L.F. BAKER, S.D. ALEXANDER, A.C. BARRETT,

Q.M. ALEXANDER, D.W. BARTON, SALVADORE ALFONSO, GERALYNN O. ALICE, B.D. COLLIER, JR., EVELYN ALICE, BERT COLLIER, C.M. ALLEN, M.A. CORRO, W.S. ALLEN, R. DRIER, O.M. ALVAREZ, M.D., J.B. EUSTIS, R.J. ALVAREZ, W.A. AMERSON, E.C. ANDERSON, K. ANDERSON, O.J. ANDRE, ANN H. LEVY, F.R. ARCERI, JOYCE O. LOPRESTO, C.H. ARCHER, JR., G.C. AUER, C.H. AUGSBURGER, L.J. BABST, CARL SCHRODER, M. BACHEMIN, RAUL VIERA, J.R. BALLARD, PAOLA AGASTINI, and LEO BABIN, said Motion requesting that such dismissal be without prejudice and with full reservation of rights, and upon the remaining Plaintiffs, HENRY F. GUIDRY, JR., FREDERICK J. HUGO, HENRY C. MELIUS, and GEORGE J. PETERSON, III, having failed to amend their pleadings, as required by the Order of the Court dated February 26, 1992; and, the Court having found that at a status conference hearing held herein on July 13, 1992, the Plaintiffs were given until August 18, 1992, within which to present or file such amendment; and, having failed to do and having announced to the Court at a status held August 18, 1992, that the Plaintiffs were electing to stand on the merits of their class action; and, the Court having otherwise been fully advised in the premises finds as follows:

The Court makes the following findings, conclusions, and rulings:

The Court finds that the Motion of the Plaintiffs to dismiss E.E. JEANSONNE, ANTHONY FORTIER, J.M. CARRIERE, JOHN C. BARBER, SR., JACK A. BARNABY, JOSEPH F. BAROCO, JR., CLAYTON B. BARRE, F.J. ADAM, K.D. BACKSEN, JOHN Q. ADAM, D.J. BAGERT,

MICHEL ALDEN, R.E. BAILLARGEON, H.F. ALEXANDER, E.M. BAKER, R.F. ALEXANDER, L.F. BAKER, S.D. ALEXANDER, A.C. BARRETT, Q.M. ALEXANDER, D.W. BARTON, SALVADORE ALFONSO, GERALYNN O. ALICE, B.D. COLLIER, JR., EVELYN ALICE, BERT COLLIER, C.M. ALLEN, M.A. CORRO, W.S. ALLEN, R. DRIER, O.M. ALVAREZ, M.D., J.B. EUSTIS, R.J. ALVAREZ, W.A. AMERSON, E.C. ANDERSON, K. ANDERSON, O.J. ANDRE, ANN H. LEVY, F.R. ARCERI, JOYCE O. LOPRESTO, C.H. ARCHER, JR., G.C. AUER, C.H. AUGSBURGER, L.J. BABST, CARL SCHRODER, M. BACHEMIN, RAUL VIERA, J.R. BALLARD, PAOLA AGASTINI, and LEO BABIN should be sustained; and, that such parties should be dismissed without prejudice and with each such party maintaining and reserving all of his/her rights.

The Court further finds that after such dismissal the Plaintiffs in this action consist of HENRY J. GUIDRY, JR., FREDERICK J. HUGO, HENRY C. MELIUS, and GEORGE J. PETERSON, III, all other Plaintiffs having been dismissed herefrom.

The Court further finds and rules that by virtue of the remaining Plaintiffs, HENRY J. GUIDRY, JR., FREDERICK J. HUGO, HENRY C. MELIUS, and GEORGE J. PETERSON, III, having failed or refused to amend as required by the Order of February 26, 1992, and having failed or refused to amend within the extended period of time allowed in the status conference mentioned above, and having indicated a desire to the Court not to proceed in this action individually, the Complaint of HENRY J. GUIDRY, JR., FREDERICK J. HUGO, HENRY C. MELIUS, and GEORGE J. PETERSON, III, should be dismissed

with prejudice to proceed individually, but without prejudice to proceed as class members if it is ultimately determined that a class action is appropriate in this case. IT IS THEREFORE:

ORDERED, ADJUDGED AND DECREED that the Plaintiffs, E.E. JEANSONNE, ANTHONY FORTIER, J.M. CARRIERE, JOHN C. BARBER, SR., JACK A. BARNABY, JOSEPH F. BAROCO, JR., CLAYTON B. BARRE, F.J. ADAM, K.D. BACKSEN, JOHN Q. ADAM, D.J. BAGERT, MICHEL ALDEN, R.E. BAILLARGEON, H.F. ALEXANDER, E.M. BAKER, R.F. ALEXANDER, L.F. BAKER, S.D. ALEXANDER, A.C. BARRETT, Q.M. ALEXANDER, D.W. BARTON, SALVADORE ALFONSO, GERALYNN O. ALICE, B.D. COLLIER, JR., EVELYN ALICE, BERT COLLIER, C.M. ALLEN, M.A. CORRO, W.S. ALLEN, R. DRIER, O.M. ALVAREZ, M.D., J.B. EUSTIS, R.J. ALVAREZ, W.A. AMERSON, E.C. ANDERSON, K. ANDERSON, O.J. ANDRE, ANN H. LEVY, F.R. ARCERI, JOYCE O. LOPRESTO, C.H. ARCHER, JR., G.C. AUER, C.H. AUGSBURGER, L.J. BABST, CARL SCHRODER, M. BACHEMIN, RAUL VIERA, J.R. BALLARD, PAOLA AGASTINI, and LEO BABIN, be, and they hereby are, dismissed and their claims non-suited without prejudice with full reservation of rights. IT IS FURTHER:

ORDERED, ADJUDGED AND DECREED that the Complaint filed hereby by HENRY J. GUIDRY, JR., FREDERICK J. HUGO, HENRY C. MELIUS, and GEORGE J. PETERSON, III, be, and the same hereby is, dismissed with prejudice to proceed individually, but without prejudice to proceed as class members if it is ultimately determined that a class action is appropriate in this case. IT IS FURTHER:

ORDERED, ADJUDGED AND DECREED that all costs of this matter be, and the same hereby are, assessed against the Plaintiffs, HENRY J. GUIDRY, JR., FREDERICK J. HUGO, HENRY C. MELIUS, and GEORGE J. PETERSON, III, for which let execution issue.

SO ORDERED, ADJUDGED and DECREED on this the 24th day of September, 1992.

/s/ [John M. Roper]
UNITED STATES
MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

E.E. JEANSONNE, ET AL PLAINTIFFS

VS. CIVIL ACTION NO. S90-0094(BR)

MISSISSIPPI UTILITY INC., ET AL DEFENDANTS

Filed October 6, 1992

ORDER

This cause comes before the Court on motions of the plaintiffs to alter or amend judgment pursuant to Rules 52(b) and 59(e) of the Federal Rules of Civil Procedure. The Court, upon review of the motions, and otherwise being fully advised in the premises, is of the opinion that the motions are without merit and shall be denied. It is therefore,

ORDERED and ADJUDGED, that the plaintiff's motion to alter or amend judgment pursuant to Rule 52(b) of the Federal Rules of Civil Procedure be, and is hereby, denied. It is further,

ORDERED and ADJUDGED, that the plaintiffs' motion to alter or amend judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure be, and is hereby, denied.

SO ORDERED AND ADJUDGED, this the 5th day of October, 1992.

/s/ [John M. Roper]
UNITED STATES
MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

E.E. JEANSONNE, ET AL PLAINTIFFS

VS. CIVIL ACTION NO. S90-0094(BR)

MISSISSIPPI UTILITY INC., ET AL DEFENDANTS

Filed October 14, 1992

ORDER

This matter is before the Court on motion of the plaintiffs to vacate the judgments entered in this cause, pursuant to Rule 60(b) of the Federal Rules of Civil

Procedure. Upon consideration of the motion, and otherwise being fully advised in the premises, this Court finds the motion to be without merit. It is therefore,

ORDERED and ADJUDGED, that the Plaintiff's motion to vacate the Judgments rendered by this Court on February 27, 1992, and September 25, 1992 be, and is hereby, denied.

SO ORDERED AND ADJUDGED, this the 14th day of October, 1992.

/s/ [John M. Roper]
UNITED STATES
MAGISTRATE JUDGE

WILLIAM J. MANION
Attorney at Law
P. O. Box 1776
Slidell, LA 70459
(504) 649-4000

October 21, 1992 (Filed)

Honorable John M. Roper
United States Magistrate Judge
P. O. Drawer 1164
Biloxi, MS 39533

Re: Jeansonne, et al v.
Mississippi Utility, Inc., et al
USDC, Southern District (Biloxi)
CA No. S90-0094 (BR) (MJR)

Dear Judge Roper:

On Monday, October 19, 1992, I examined the filings in the United States Court of Appeals for the Fifth Circuit. On Tuesday, October 20, 1992, I examined the record in the United States District Court for the Southern District of Mississippi (Biloxi) and verified that on October 4, 1991 I had filed a Motion for Leave to File Supplemental Complaint and Add Defendants (Purcell Co., Inc., Diamondhead Utility Co., Inc. and Diamondhead Utilities) with notice of same addressed to opposing counsel. In addition, I filed as Affidavit and Supplemental Affidavit of Complaint. A proposed Order was submitted for your signature which never occurred; opposing counsel were noticed.

I remember that the aforesaid pleadings were accompanied by a Summons and Return that were put on hold by the Clerk's office until you signed the Order submitted. Exhibits 1, 2, 3 and 4 were found in the Miscellaneous Record file in the Clerk's office. Since the Exhibits mentioned were not filed and docketed, the Clerk would not certify Exhibits 1, 2, 3 and 4 in the Miscellaneous file until you signed an Order. On March 16, 1992, I listed other motions and nothing happened. Exhibit 5.

In all fairness to you, as of this date, I would reconstruct the Supplemental Complaint urged on October 4, 1991. Notwithstanding, four plaintiffs have been penalized for not responding to your latest Order to go forward individually. I believe the breakdown is in your department and is not discretionary in nature.

As late as March 16, 1992, you were urged to grant, deny or modify the motions submitted. It was only upon

examining the Clerk's Miscellaneous file that I learned that services of the Amended Complaint were on "Hold" pending your action.

I submit that under the circumstances set forth herein, all plaintiffs should be dismissed without prejudice and be allowed to amend and go forward without any pre-condition or restrictions based on dismissed Class Action. This case, as amended, should be heard by a designated Judge out of the District.

Notwithstanding, I will notice an appeal timely.

Respectfully submitted,

/s/ [W. J. Manion]
W. J. Manion
Pro Hac Vice
P. O. Box 1776
Slidell, LA 70459
(504) 649-4000
La. Bar No. 9089

WJM:dg
cc: Virgil G. Gillespie, Esq.
1719 Beach Blvd., #306
P. O. Box 1930
Biloxi, MS 39533

Walter J. Phillips, Esq.
P. O. Box 128
Bay St. Louis, MS 39520

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

May 21, 1993 (Filed)

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

No. 92-7699 – Jeansonne, etal v. Mississippi Utility, Inc., et al

---

Enclosed is a copy of the Court's decision this day rendered in the above case. A judgment has this day been entered in accordance therewith pursuant to Rule 36 of the Federal Rules of Appellate Procedure.

Rules 39, 40 and 41, FRAP and Local Rules 39 and 41 govern costs, petitions for rehearing and mandates. *A petition for rehearing must be filed in the Clerk's Office within fourteen (14) days from this date. Placing the petition in the mail on ~~the 14th day~~ will not suffice.*

The judgment entered provides that plaintiffs-appellants pay to defendants-appellees the costs on appeal.

Very truly yours,

RICHARD E. WINDHORST, JR.,
Clerk
By: [signed]
Deputy Clerk

Enclosure
Mr. W.J. Manion
Mr. Virgil G. Gillespie
Mr. Walter James Phillips

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 92-7699
Summary Calendar

E.E. JEANSONNE, ET AL.,
Plaintiffs,

HENRY P. GUIDRY, JR., ET AL.,
Plaintiffs-Appellants,

versus

MISSISSIPPI UTILITY, INC., ET AL.,
Defendants-Appellees.

Appeals from the United States District Court
for the Southern District of Mississippi

(CA-S90-0094-BR)

Before GARWOOD, JONES AND EMILIO M. GARZA, Circuit Judges.[1]

PER CURIAM:

AFFIRMED. See Local Rule 47.6.

---

[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

BOOK 89 PAGE 589

BOOK BB 83 PAGE 764

Exhibit "A"
Page 1 of 5

OPTION AGREEMENT

THIS OPTION AGREEMENT, made and entered into as of the 6th day of January, 1993, by and between GAYNEL GEX BOH, WALTER J. GEX, III, and JOSEPH W. GEX, (hereinafter referred to as "Seller"), and PURCELL CO., INC., (hereinafter referred to as "Buyer"),

FOR AND IN CONSIDERATION of the sum of Ten and No/100 Dollars ($10.00), cash in hand paid, the receipt and sufficiency of which are hereby acknowledged, Seller hereby grants to Buyer an irrevocable exclusive Option, for 103 days after the date hereof, to purchase certain real estate located in Hancock County, Mississippi, upon the following terms and conditions:

1. PROPERTY: The property covered by this Option is that certain land shown on plat attached hereto and made a part hereof as Exhibit "A" and more particularly described on Exhibit "B" attached hereto and made a part hereof. Prior to closing, Buyer shall furnish Seller a metes and bounds description of the option property and a survey plat thereof certified to Seller and Buyer by a registered land surveyor licensed to do business in the State of Mississippi.

2. PURCHASE PRICE: The purchase price for the subject property shall be the sum of Fifty Thousand and No/100 Dollars ($50,000.00), which shall be paid in cash at the closing of the sale.

3. TENANT: In the event that Buyer elects to purchase the subject property and such purchase includes any portion of the leasehold of the current tenant of the property, Nell Frisbie d/b/a Coldwell Banker Real Estate, Buyer at Buyer's sole expense, shall relocate the tenant to a leasehold site of tenant's choice.

4. EXERCISE OF OPTION: If Buyer elects to exercise this Option to purchase, notice of such election shall be given to Seller in writing, and such notice will be considered timely given if sent by certified U. S. Mail, postage prepaid, addressed to Seller at address provided in Paragraph 8 of this Option, and deposited in U. S. Mail on or before 5:00 p.m. of the last day of the term of the then Option term. The sale will be closed within 30 days after the date on which the notice of exercise is posted in

the U. S. Mail, with the appropriate purchase price to be paid in cash at closing of the sale.

5. SOIL TEST, SURVEYS, APPRAISALS, ETC.: During the period of this Option, Buyer's representatives may go upon the land for the purpose of making soil tests, site studies, surveys, and appraisals provided that Buyer shall indemnify Seller against any damages of whatever nature and shall repair any damage occurring as a result of such activities.

6. TITLE AND CLOSING COSTS: At the closing of the sale, Seller shall convey the property by general warranty deed, free and clear from all liens and encumbrances, excepting the aforementioned leasehold and subject to wetlands/tidelands exception.

7. RIGHTS TO ASSIGN: The Buyer has the right to assign its rights under this Option.

8. NOTICES: All notices consents and other communications hereunder shall be in writing and shall be personally delivered or mailed by registered or certified U. S. Mail, return receipt requested, postage prepaid at the following addressed: If to the Seller, Gaynel Gex Boh, Walter J. Gex, III, and Joseph W. Gex, P.O. Drawer 227, Biloxi, Mississippi 39533; if to Buyer, Purcell Co., Inc., 4402 East Aloha Drive, Suite 4, Diamondhead, Mississippi 39525, Attention: Artis E. James, Jr., President, or to any such other addresses as may be furnished by Seller or Buyer in writing.

IN WITNESS WHEREOF, the parties had hereunto set their hands and seals as of day and year hereinabove written.

BUYER:

ATTEST: PURCELL CO., INC.

/s/ Carl H. Joffe
CARL H. JOFFE
Secretary

By: /s/ P. Holcomb Hector
P. HOLCOMB HECTOR
Vice President

SELLER:

/s/ Gaynel Gex Boh
GAYNEL GEX BOH

/s/ Walter J. Gex, III
WALTER J. GEX, III

/s/ Joseph W. Gex
JOSEPH W. GEX

Exhibit "A"
Page 3 of 5

BOOK 89 PAGE 591

BOOK BB 83 PAGE 766

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

Personally appeared before me, the undersigned authority in and for the said county and state, on this 25th day of January, 1993, within my jurisdiction, the within named P. HOLCOMB HECTOR and CARL H. JOFFE, who acknowledged that they are the Vice President and Secretary, respectively, of PURCELL CO., INC., a Delaware corporation, and that for and on behalf of the said corporation, and as its act and deed they executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

[Seal]

/s/ Dixie Beasley Weaver
Notary Public

My Commission Expires:
2/11/95

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

Personally appeared before me, the undersigned authority in and for the said county and state, on this 25th day of January, 1993, within my jurisdiction, the within named GAYNEL GEX BOH, who acknowledged that she executed the above and foregoing instrument.

[Seal]

/s/ Kathleen A. Ladner
Notary Public

My Commission Expires:

7/23/94

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

Personally appeared before, me, the undersigned authority in and for the said county and state, on this 25th day of January, 1993, within my jurisdiction, the within named WALTER J. GEX, III, who acknowledged that he executed the above and foregoing instrument.

[Seal]

/s/ Kathleen A. Ladner
Notary Public

My Commission Expires:

7/23/94

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

Personally appeared before me, the undersigned authority in and for the said county and state, on this

25th day of January, 1993, within my jurisdiction, the within named JOSEPH W. GEX, who acknowledged that he executed the above and foregoing instrument.

[Seal]

/s/ Kathleen A. Ladner
Notary Public

My Commission Expires:

7/23/94

NOTICE

Effective June 1, 1993, the following Biloxi offices will no longer utilize post office boxes:

- Clerk, U. S. District Court
- Judge Walter Gex, III

To assure prompt receipt of items forwarded to these offices, please note the following changes of address:

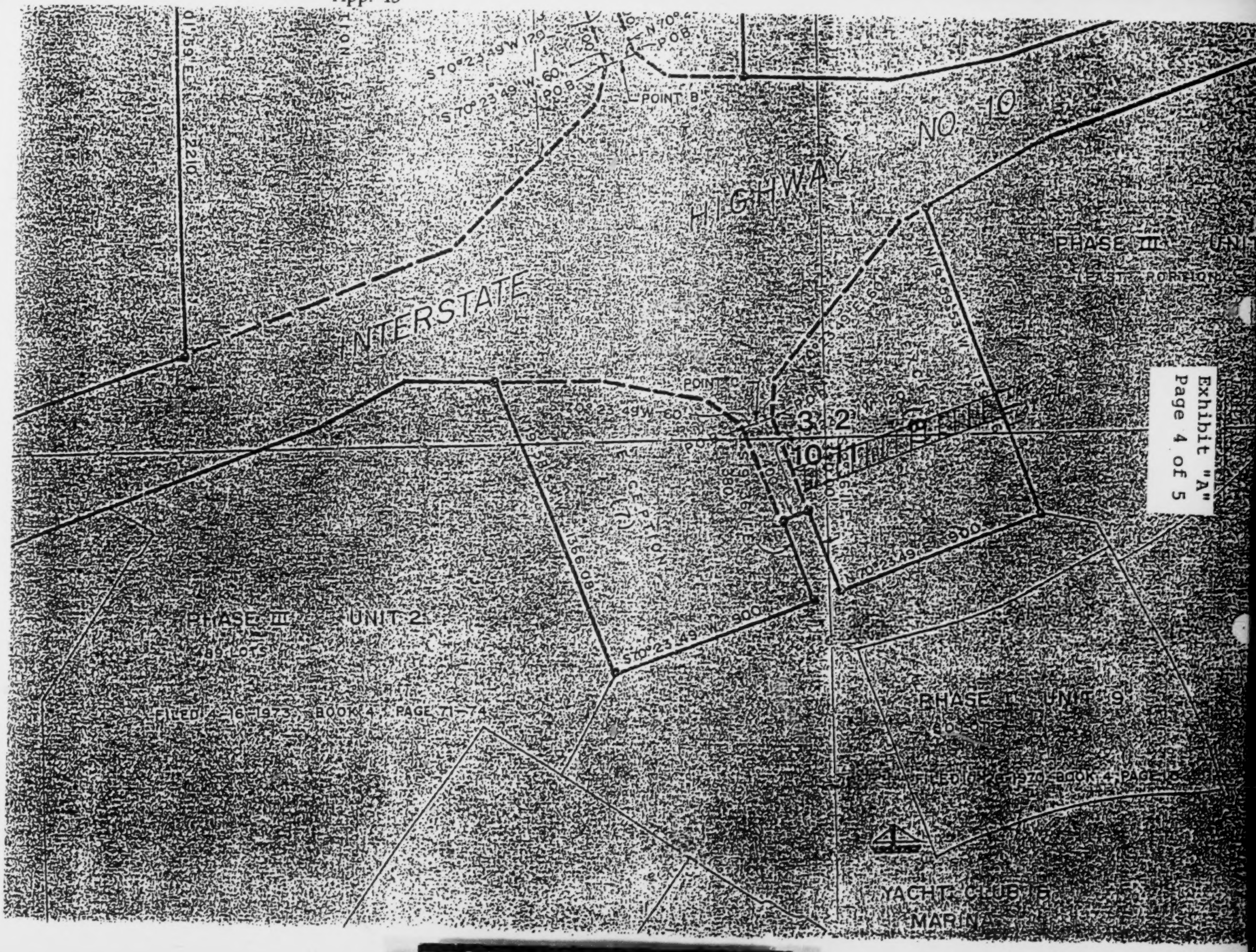
- Clerk, U. S. District Court
  725 Washington Loop, Suite 243
  Biloxi, MS 39530-2267

  Telephone: (601) 432-8623

- Honorable Walter J. Gex, III
  U. S. District Judge
  725 Washington Loop, Suite 238
  Biloxi, MS 39530-2267

  Telephone: (601) 374-2807

Thank you for your assistance in this matter.



BEST AVAILABLE COPY

BOOK 89 PAGE 593
BOOK BB 83 PAGE 768

Exhibit "A"
Page 5 of 5

EXHIBIT "B"

Commencing at the Northwest corner of Lot 25, Block 5, Unit 2, Phase 3, Diamondhead, according to map or plat thereof recorded in Plat Book 4 at Pages 71-74, inclusive, in the Office of the Chancery Clerk of Hancock County, Mississippi, the Point of Beginning; thence South 19 degrees 59 minutes 53 seconds East along the Westerly boundary of said Lot 25 a distance of 75 ± feet to the Northwest corner of Lot 24, Block 5, Unit 2, Phase 3, Diamondhead, thence South 19 degrees, 59 minutes, 53 seconds East along the Westerly boundary of said Lot 24 a distance of 25 feet to a point; thence South 70 degrees, 23 minutes, 49 seconds West a distance of 900 ± feet to a point on the Eastern boundary of Gex Drive South; thence North 19 degrees, 36 minutes, 11 seconds West along the Eastern boundary of said Gex Drive South a distance of 100 feet to a point; thence North 70 degrees, 23 minutes, 49 seconds East a distance of 900 ± feet to the Point of Beginning, said parcel being located in Sections 2, 10 and 11 of Township 8 South, Range 14 West.

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

(SEAL)

I, E. MICHAEL NECAISE, Clerk of the Chancery Court of said County, certify that the within instrument was filed for record in my office on this the 3 day of

February, 1993, at 8:11 o'clock A.M., and duly recorded in Deed Record Book No. BB83, Page No. 764-768.

WITNESS my hand and Seal of Office, this the 4 day of February, 1993.

E. MICHAEL NECAISE,
Chancery Clerk
By: /s/ Shelia Daniels, D.C.

Exhibit "B"
Page 1 of 5

OPTION AGREEMENT

BOOK BB 83 PAGE 769

THIS OPTION AGREEMENT, made and entered into as of the 6th day of January, 1993, by and between GAYNELL GEX BOH, WALTER J. GEX, III, and JOSEPH W. GEX, (hereinafter referred to as "Seller"), and PURCELL CO., INC., (hereinafter referred to as "Buyer"),

FOR AND IN CONSIDERATION of the sum of Ten and No/100 Dollars ($10.00), cash in hand paid, the receipt and sufficiency of which are hereby acknowledged, Seller hereby grants to Buyer an irrevocable exclusive Option, for 103 days after the date hereof, to purchase certain real estate located in Hancock County, Mississippi, upon the following terms and conditions:

1. PROPERTY: The property covered by this Option is that certain land shown on plat attached hereto and made a part hereof as Exhibit "A" and more particularly described on Exhibit "B" attached hereto and made a part hereof. Prior to closing, Buyer shall furnish Seller a metes and bounds description of the option property and a survey plat thereof certified to Seller and Buyer by a registered land surveyor licensed to do business in the State of Mississippi.

2. PURCHASE PRICE: The purchase price for the subject property shall be the sum of Fifty Thousand and No/100 Dollars ($50,000.00) per acre, which shall be paid in cash at the closing of the sale.

3. TENANT: In the event that Buyer elects to purchase the subject property, Buyer, at Buyer's sole expense, shall relocate the current tenant of the property, Nell Frisbie d/b/a/ Coldwell Banker Real Estate, to a leasehold site of tenant's choice.

4. EXERCISE OF OPTION: If Buyer elects to exercise this Option to purchase, notice of such election shall be given to Seller in writing, and such notice will be considered timely given if sent by certified U. S. Mail, postage prepaid, addressed to Seller at address provided in Paragraph 8 of this Option, and deposited in U. S. Mail on or before 5:00 p.m. of the last day of the term of the then Option term. The sale will be closed within 30 days after the date on which the notice of exercise is posted in the U. S. Mail, with the appropriate purchase price to be paid in cash at closing of the sale.

Exhibit "B"
Page 2 of 5

BOOK 89 PAGE 595
BOOK BB 83 PAGE 770

5. SOIL TEST, SURVEYS, APPRAISALS, ETC.: During the period of this Option, Buyer's representatives may go upon the land for the purpose of making soil tests, site studies, surveys, and appraisals provided that Buyer shall indemnify Seller against any damages of whatever nature and shall repair any damage occurring as a result of such activities.

6. TITLE AND CLOSING COSTS: At the closing of the sale, Seller shall convey the property by general warranty deed, free and clear from all liens and

encumbrances, excepting the aforementioned leasehold and subject to wetlands/tidelands exception.

7. RIGHTS TO ASSIGN: The Buyer has the right to assign its rights under this Option.

8. NOTICES: All notices consents and other communications hereunder shall be in writing and shall be personally delivered or mailed by registered or certified U. S. Mail, return receipt requested, postage prepaid at the following addressed: If to the Seller, Gaynel Gex Boh, Walter J. Gex, III, and Joseph W. Gex, P.O. Drawer 227, Biloxi, Mississippi 39533; if to Buyer, Purcell Co., Inc., 4402 East Aloha Drive, Suite 4, Diamondhead, Mississippi 39525, Attention: Artis E. James, Jr., President, or to any such other addresses as may be furnished by Seller or Buyer in writing.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year hereinabove written.

BUYER:

PURCELL CO., INC.

ATTEST:

/s/ Carl H. Joffe
CARL H. JOFFE
Secretary

By: /s/ P. Holcomb Hector
P. HOLCOMB HECTOR
Vice President

SELLER:

/s/ Gaynel Gex Boh
GAYNEL GEX BOH

/s/ Walter J. Gex, III
WALTER J. GEX, III

/s/ Joseph W. Gex
JOSEPH W. GEX

BOOK 89 PAGE 596
BOOK BB 83 PAGE 771

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

Personally appeared before me, the undersigned authority in and for the said county and state, on this 25th day of January, 1993, within my jurisdiction, the within named P. HOLCOMB HECTOR and CARL H. JOFFE, who acknowledged that they are the Vice President and Secretary, respectively, of PURCELL CO., INC., a Delaware corporation, and that for and on behalf of the said corporation, and as its act and deed they executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

/s/ Dixie Beasley Weaver
Notary Public (SEAL)

My Commission Expires:

2/11/95

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

Personally appeared before me, the undersigned authority in and for the said county and state, on this 25th day of January, 1993, within my jurisdiction, the within named GAYNEL GEX BOH, who acknowledged that she executed the above and foregoing instrument.

/s/ Kathleen A. Ladner
Notary Public (SEAL)

My Commission Expires:

7/23/94

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

Personally appeared before me, the undersigned authority in and for the said county and state, on this 25th day of January, 1993, within my jurisdiction, the within named WALTER J. GEX, III, who acknowledged that he executed the above and foregoing instrument.

/s/ Kathleen A. Ladner
Notary Public (SEAL)

My Commission Expires:

7/23/94

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

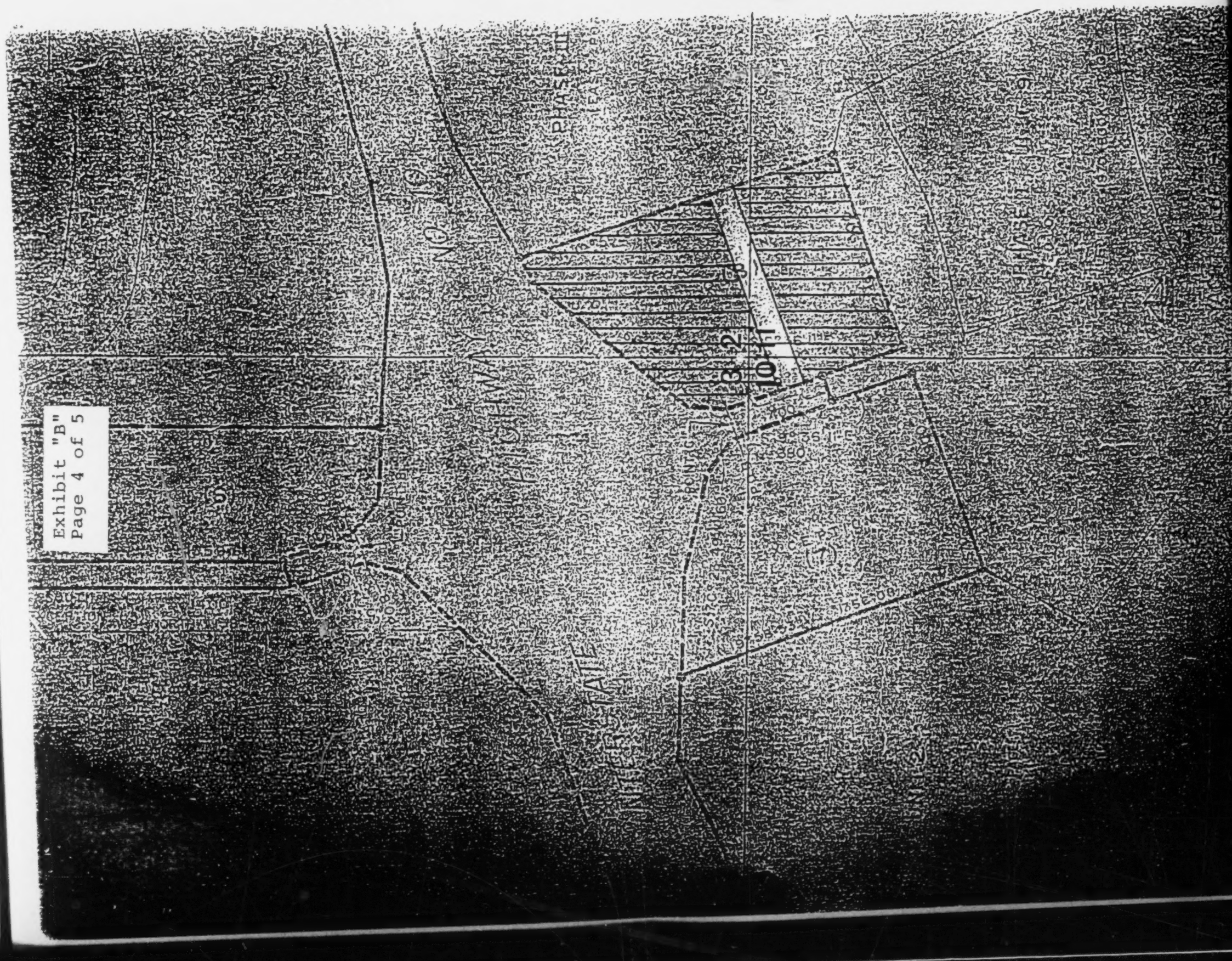
Personally appeared before me, the undersigned authority in and for the said county and state, on this 25th day of January, 1993, within my jurisdiction, the within named JOSEPH W. GEX, who acknowledged that he executed the above and foregoing instrument.

/s/ Kathleen A. Ladner
Notary Public (SEAL)

My Commission Expires:

7/23/94

BEST AVAILABLE COPY



BOOK 89 PAGE 598
BOOK BB 83 PAGE 773

Exhibit "B"
Page 5 of 5

EXHIBIT "B"

Commencing at the Northwest corner of Lot 35, Block 5, Unit 2, Phase 3, Diamondhead, according to map or plat thereof recorded in Plat Book 4 at Pages 71-74, inclusive, in the Office of the Chancery Clerk of Hancock County, Mississippi, the Point of Beginning; thence South 19 degrees, 59 minutes, 53 seconds East a distance of 1,399.46 feet to a point; thence South 70 degrees, 23 minutes, 49 seconds West a distance of 900 ± feet to a point on the Eastern boundary of Gex Drive South; thence North 19 degrees, 36 minutes, 11 seconds West a distance of 780 ± feet to a point; thence North Northeast along the Southern boundary of Interstate Highway No. 10 right-of-way a distance of 150 ± feet to a point; thence Northeast along the said Southern boundary of Interstate Highway No. 10 right-of-way a distance of 850 ± feet to a point; thence East Northeast along the said Southern boundary of Interstate Highway No. 10 right-of-way a distance of 125 ± feet to the Point of Beginning, said parcel being located in Sections 2, 3, 10 and 11 of Township 8 South, Range 14 West, LESS AND EXCEPT the following parcel:

Commencing at the Northwest corner of Lot 25, Block 5, Unit 2, Phase 3, Diamondhead, according to map or plat thereof recorded in Plat Book 4 at Pages 71-74, inclusive, in the Office of the Chancery Clerk of Hancock County, Mississippi, the Point of Beginning; thence South 19

degrees 59 minutes 53 seconds East along the Westerly boundary of said Lot 25 a distance of 75 ± feet to the Northwest corner of Lot 24, Block 5, Unit 2, Phase 3, Diamondhead, thence South 19 degrees, 59 minutes, 53 seconds East along the Westerly boundary of said Lot 24 a distance of 25 feet to a point; thence South 70 degrees, 23 minutes, 49 seconds West a distance of 900 ± feet to a point on the Eastern boundary of Gex Drive South; thence North 19 degrees, 36 minutes, 11 seconds West along the Eastern boundary of said Gex Drive South a distance of 100 feet to a point; thence North 70 degrees, 23 minutes, 49 seconds East a distance of 900 ± feet to the Point of Beginning, said parcel being located in Sections 2, 10 and 11 of Township 8 South, Range 14 West.

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

(SEAL)

I, E. MICHAEL NECAISE, Clerk of the Chancery Court of said County, certify that the within instrument was filed for record in my office on this the 3 day of February, 1993, at 8:12 o'clock A.M., and duly recorded in Deed Record Book No. BB83, Page No. 769-773.

WITNESS my hand and Seal of Office, this the 4 day of February, 1993.

E. MICHAEL NECAISE,
Chancery Clerk
By: /s/ Shelia Daniels, D.C.

(seal)

Exhibit "C"
Page 1 of 4

BOOK 89 PAGE 599
BOOK BB 87 PAGE 724

ADDENDUM TO OPTION AGREEMENT

This Addendum is made and entered into as of the 16th day of April, 1993, by and between GAYNEL GEX BOH, WALTER J. GEX, III, and JOSEPH W. GEX ("Seller") and PURCELL CO., INC. ("Buyer").

WHEREAS, Buyer and Seller have heretofore entered into an Option Agreement dated as of January 6, 1993, recorded in Book BB-83 at Pages 764-768 in the Office of the Chancery Clerk of Hancock County, Mississippi, known as parcel "B", and;

WHEREAS, Buyer and Seller have heretofore entered into an Option Agreement dated as of January 6, 1993, recorded in Book BB-83 at Pages 769-773 in the Office of the Chancery Clerk of Hancock County, Mississippi, known as parcel "A"; and, Buyer and Seller are desirous of extending the terms of said Options;

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars ($10.00), cash in hand paid together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree to extend the term of the aforesaid Option on parcel "B" until 5:00 P.M. on July 19, 1993; and to extend the term of the aforesaid Option on parcel "A" until 5:00 P.M. on July 19, 1993, or until Buyer exercises its option on parcel "B", whichever occurs first. All other terms and conditions of said Option shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hand and seal as of the day and year hereinabove written.

Exhibit "C"
Page 2 of 4

BOOK 89 PAGE 600
BOOK BB 87 PAGE 725

ATTEST:

/s/ Carl H. Joffe
CARL H. JOFFE
Secretary

PURCELL CO., INC., Buyer

By: /s/ P. Holcomb Hector
P. HOLCOMB HECTOR
Vice-President

/s/ Gaynel Gex Boh
GAYNEL GEX BOH, Seller

/s/ Walter J. Gex, III
WALTER J. GEX, III, Seller

/s/ Joseph W. Gex
JOSEPH W. GEX, Seller

Exhibit "C"
Page 3 of 4

BOOK 89 PAGE 601
BOOK BB 87 PAGE 726

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

Personally appeared before me, the undersigned authority in and for the said county and state, on this 6th day of May, 1993, within my jurisdiction, the within named P. HOLCOMB HECTOR and CARL H. JOFFE, who

acknowledged that they are the Vice President and Secretary, respectively, of PURCELL CO., INC., a Delaware corporation, and that for and on behalf of the said corporation, and as its act and deed they executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

/s/ Dixie Beasley Weaver
Notary Public (SEAL)

My Commission Expires:

2/11/95

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

Personally appeared before me, the undersigned authority in and for the said county and state, on this 6th day of May, 1993, within my jurisdiction, the within named GAYNEL GEX BOH, who acknowledged that she executed the above and foregoing instrument.

/s/ Kathleen A. Ladner
Notary Public (SEAL)

My Commission Expires:

7/23/94

Exhibit "C"
Page 4 of 4

BOOK 89 PAGE 602
BOOK BB 87 PAGE 727

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

Personally appeared before me, the undersigned authority in and for the said county and state, on this 6th day of May, 1993, within my jurisdiction, the within named WALTER J. GEX, III, who acknowledged that he executed the above and foregoing instrument.

/s/ Kathleen A. Ladner
Notary Public (SEAL)

My Commission Expires:

7/23/94

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

Personally appeared before me, the undersigned authority in and for the said county and state, on this 6th day of May, 1993, within my jurisdiction, the within named JOSEPH W. GEX, who acknowledged that he executed the above and foregoing instrument.

/s/ Kathleen A. Ladner
Notary Public (SEAL)

My Commission Expires:

7/23/94

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

(SEAL)

I, E. MICHAEL NECAISE, Clerk of the Chancery Court of said County, certify that the within instrument was filed for record in my office on this the 11 day of May, 1993, at 2:21 o'clock P.M., and duly recorded on Deed Record Book No. BB87, Page No. 724-727.

WITNESS my hand and Seal of Office, this the 12 day of May, 1993.

E. MICHAEL NECAISE,
Chancery Clerk
By: /s/ Shelia Daniels, D.C.

Filed 21 June 1993

BOOK 89 PAGE 603

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

LIMITED ASSIGNMENT OF DEVELOPER RIGHTS

KNOW ALL MEN BY THESE PRESENTS that PURCELL CO., INC. (hereinafter "Assignor"), a Delaware corporation, in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby sell, assign and transfer unto MISSISSIPPI GAMING CORPORATION (hereinafter "Assignee"), a Delaware corporation, with respect to the property more particularly described on Exhibit "A" attached hereto and made a part hereof (hereinafter "Property") all of its right, title and interest in and to Paragraphs 8. (a), (b), (c), (d) and (e) of that certain Supplemental Agreement, dated as of December 13, 1984, by and between Assignor and the Diamondhead Country Club and Property Owners Association, Inc., recorded in Book AA-97 at Page 491 of the records of the Chancery Clerk of Hancock County, Mississippi.

The terms of this Assignment shall inure to and be for the benefit of Assignee, Assignor and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of this 19th day of June, 1993.

ATTEST:

/s/ Carl H. Joffe
CARL H. JOFFE
Secretary

PURCELL CO., INC.

By: /s/ P. Holcomb Hector
P. HOLCOMB HECTOR
Vice President

ATTEST:

/s/ Sharon E. Petty
As its secretary

MISSISSIPPI GAMING CORPORATION

By: /s/ Church H. Illegible
As its President

BOOK 89 PAGE 604

STATE OF MISSISSIPPI

COUNTY OF HARRISON

Personally appeared before me, the undersigned authority in and for the said county and state, on this 19th day of June, 1993, within my jurisdiction, the within named P. Holcomb Hector and Carl H. Joffe, who acknowledged that they are the Vice President and Secretary, respectively, of Purcell Co., Inc., a Delaware corporation, and that for and on behalf of the said corporation, and as its act and deed they executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

/s/ Shelia M. Alexander
NOTARY PUBLIC

My Commission Expires:

2-24-95

STATE OF Mississippi

COUNTY OF Harrison

Personally appeared before me, the undersigned authority in and for the said county and state, on this 19th day of June, 1993, within my jurisdiction, the within named Charles H. Reddien and Sharon E. Petty, who acknowledged that they are the President and Secretary, respectively, of Mississippi Gaming Corporation, a Delaware corporation, and that for and on behalf of the said corporation, and as its act and deed they executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

/s/ Shelia M. Alexander
NOTARY PUBLIC

My Commission Expires:

2-24-95

EXHIBIT "A"

BOOK 89 PAGE 605

LEGAL DESCRIPTION

A Parcel of land situated in Sections 1, 2, and 11, Township 8 South, Range 14 West, Hancock County, Mississippi, and being more particularly described as follows:

Beginning at an iron rod found at the Northwest corner of Lot 35, Block 5, Unit 2, Phase 3, Diamondhead Subdivision, according to Plat recorded in Plat Book 4 at Pages 71-74 in the office of the Chancery Clerk of Hancock County, Mississippi; thence S19° 35' 50"E 1399.46' to a

concrete monument set; thence S70°27' 59"W 900.89' to an iron rod found on the East right-of-way of Gex Drive South; thence along said East right-of-way, S19° 32' 43"E 180.19'; thence along a curve of said right-of-way to the left, having a radius of 25' and an arc of 25.39', to an iron rod being S48°37' 29"E 24.31', and lying on the Northern right-of-way of the Yacht Club Circle; thence along a curve of said Northern right-of-way to the right, having a radius of 140' and an arc of 99.10', to an iron rod being S57°26' 19"E 97.04', and lying on the North right-of-way of Diamondhead Drive South; thence along a curve of said North right-of-way to the left, having a radius of 25' and an arc of 29.15', to an iron rod being S70°33' 40"E 27.52'; thence along said North right-of-way, N76°02'19"E 202.77' to an iron rod; thence along a curve of said North right-of-way to the left, having a radius of 1666.8' and an arc of 398.52', to an iron rod being N69°04' 06"E 388.15' to an iron rod at the Northeast corner of Phase 1, Unit 9, Diamondhead Subdivision, according to Plat recorded in Plat Book 4 at Pages 12-13 in the office of the Chancery Clerk of Hancock County, Mississippi; thence along a curve of said North right-of-way of Diamondhead Drive South to the left having a radius of 2256.83' and an arc of 351.42' to a concrete monument being N57°53'11"E 351.06' and being 350' Northeast of the East line of said Phase 1, Unit 9, Diamondhead Subdivision; thence S27°39'10"E 558.40' to a concrete monument; thence along a curve to the right, having a radius of 2511.60' and an arc of 620; to a concrete monument being S20°34'51"E 618.42'; thence along the tree line, N23°27'15"E 2258.43' to an iron rod; thence along the tree line, N48°06'10"E 1259.40' to an iron rod; thence along the tree line, N83°16'37"E 1582.85' to an

iron rod; thence along the tree line, N85°05'42"E 2177.84' to an iron rod' thence along the tree line, N82°45'05"E 876.23' to an iron rod; thence along the tree line, S83°23'04"E 1328.80' to an iron rod; thence S30°45'14"E 965.72' to an iron rod on the Northern shoreline of the Bay of St. Louis; thence along said Northern shoreline, N76°46'55"E 400.00' to an iron rod which is 100' West of the Hancock County – Harrison County boundary line; thence N00°03'26"W along a line parallel to and 100' West of said Hancock County – Harrison County boundary line, a distance of 3580.42' to an iron rod set on the Southern right-of-way of Interstate Highway 10; thence along said Southern right-of-way, S63°57'30"W 150.39' to a concrete right-of-way marker; thence further along said Southern right-of-way, S70°26'42"W 1000.09' to a concrete right-of-way marker; thence further along said southern right-of-way S78°55'08"W 202.63' to a concrete right-of-way marker; thence further along said Southern right-of-way S70°26'58"W 1000.31' to a concrete right-of-way marker; thence further along said Southern right-of-way, S70°26'00"W 999.94' to a concrete right-of-way marker; thence further along said Southern right-of-way, S70°27'44"W 3001.27' to a concrete right-of-way marker; thence further along said Southern right-of-way, S70°28'53"W 1000.53' to a concrete right-of-way marker; thence further along said Southern right-of-way, S70°27'49"W 1001.11' to a concrete right-of-way marker; thence further along said Southern right-of-way, S69°16'31"W 499.34' to a concrete right-of-way marker; thence further along said Southern right-of-way marker; S70°29'31"W 1400.28' to a concrete right-of-way marker; thence further along said Southern right-of-way,

S60°01'49"W 549.83' to the point of beginning, LESS AND EXCEPT all lots and streets contained in Blocks 5, 6 and 7, Unit 2, Phase 3, Diamondhead Subdivision, according to Map or Plat recorded in Plat Book 4 at Pages 71-74 in the office of the Chancery Clerk of Hancock County, Mississippi, and containing 322.9 acres, more or less.

Together with a right of ingress and egress over and upon Diamondhead Drive South, Yacht Club Circle and that portion of Gex Drive South (a/k/a Yacht Club Drive) north of Yacht Club Circle formerly owned by Grantor, the rights to which are reserved by Grantor in Deed recorded in Deed Book AA-97, Page 601 of the official records of the Chancery Clerk of Hancock County, Mississippi. This easement for ingress and egress is limited in scope to use of Diamondhead Drive South within Unit 9, Phase 1, Diamondhead, according to map or plat recorded in Plat Book 4 at Pages 12-13 in the office of the Chancery Clerk of Hancock County, Mississippi, Yacht Club Circle and that private portion of Gex Drive South (a/k/a Yacht Club Drive) aforesaid to the public road known as Gex Drive South and the Interstate Highway No. 10 right-of-way. This easement is limited in duration to the lessor of the period of time of (1) twelve (12) months from the date of this conveyance, or (2) the period of time necessary for Grantee to construct alternative access (as hereinafter described) to Gex Drive South, if such construction be allowed by law, across that portion of Grantor's property which is presently platted as Diamondhead Phase 3, unit 2 located east of Gex Drive South. In the event that the requisite permit(s) for the lawful approval of the Grantee's construction of the aforesaid alternative access has not been granted or

denied by the agency(s) authorized to grant the same within twelve (12) months from the date of this conveyance, or if such requisite permit(s) for alternative access has been granted but sufficient and reasonable time within which to complete construction of such alternative access does not exist in the twelve (12) months aforesaid despite the ongoing, reasonable and best efforts of Grantee, then Grantor shall extend this easement for ingress and egress for the lesser period of time of (1) twenty-four (24) months from the date of this conveyance, or (2) the

BOOK 89 PAGE 607

period of time necessary for Grantee to complete said alternative access. In the event that the requisite permit(s) for the lawful construction of the above described alternate access to Gex Drive South is denied by the agency(s) authorized to grant same, the easement for use of the above described portion of the Diamondhead Drive South, Yacht Club Circle and Gex Drive South shall become permanent.

Together with a non-exclusive easement (alternative access) for ingress and egress over and upon Lots 24 and 25, Block 5, Unit 2, Phase 3, Diamondhead, and the streets of Polina Circle, Polina Way and Diamondhead Drive South all according to map or plat recorded in Plat Book 4 at Pages 71-74 in the Office of the Chancery Clerk of Hancock County, Mississippi.

Filed 21 June 1993

BOOK 89 PAGE 608

OPTION AGREEMENT

THIS OPTION AGREEMENT, made and entered into as of the 19th day of June, 1993, by and between PURCELL CO., INC. (hereinafter referred to as "Seller"), and MISSISSIPPI GAMING CORPORATION (hereinafter referred to as "Buyer"),

FOR AND IN CONSIDERATION of the sum of Ten and No/100 Dollars ($10.00) plus ad valorem taxes for 1993 and subsequent years, cash in hand paid, the receipt and sufficiency of which are hereby acknowledged, Seller hereby grants to Buyer an irrevocable exclusive Option, for ten (10) years after the date hereof, to purchase certain real estate located in Hancock County, Mississippi, upon the following terms and conditions:

1. **Property**: The property (hereinafter "Property") covered by this Option is that certain land comprised of:

> Lots 1-100 inclusive, Block 5, Unit 2, Phase 3, Diamondhead; Lots 1-65 inclusive Block 6, Unit 2, Phase 3, Diamondhead; and Lots 1-88 inclusive, Block 7, Unit 2, Phase 3, Diamondhead, together with the streets Diamondhead Drive South; Keke Circle; Keke Court; Keke Place; Keke Way; Owene Circle; Owene Court; Owene Place; Peka Place; Polina Circle; Polina Court; Polina Place and Polina Way as shown on that certain plat of Unit 2, Phase 3, Diamondhead, recorded in Plat Book 4 at Pages 71-74 in the Office of the Chancery Clerk of Hancock County, Mississippi, LESS AND EXCEPT that certain portion of Diamondhead Drive South

more particularly described as follows: Commencing at the Northeast corner of Phase 1, Unit 9, Diamondhead Subdivision, according to Plat recorded in Plat Book 4 at Pages 12-13 in the office of the Chancery Clerk of Hancock County, Mississippi, the Point of Beginning; thence along a curve of said North right-of-way of Diamondhead Drive South to the left having a radius of 2256.83' and an arc of 351.42' to a concrete monument being N57°53'11"E 351.06' and BOOK 89 PAGE 609 being 350.0' Northeast of the East line of said Phase 1, Unit 9, Diamondhead Subdivision; thence S27°39'10"E 90.0' to a concrete monument on the South right-of-way of Diamondhead Drive South; thence along a curve of said south right-of-way to the right, having a radius of 2336.83' and an arc of 350.43' to an iron rod being S57°47'01"W 350.10'; thence N28°22'36"W 80.0' to the Point of Beginning.

2. **Purchase Price:** The purchase price for the Property shall be the sum of Ten and No/100 Dollars ($10.00), which shall be paid in cash at the closing of the sale.

3. **EXERCISE OF OPTION:** If Buyer elects to exercise this Option to purchase, notice of such election shall be given to Seller in writing, and such notice will be considered timely given if sent by certified U.S. Mail, postage prepaid, addressed to Seller at address provided in Paragraph 8 of this Option, and deposited in U.S. Mail on or before 5:00 p.m. of the last day of the term of the then Option term. The sale will be closed within 30 days after the date on which the notice of exercise is posted in the U.S. Mail, with the appropriate purchase price to be paid in cash at closing of the sale.

4. **COMMITMENT TO VACATE PLAT:** Seller hereby covenants with and warrants to Buyer and its successors and assigns that it will exercise its utmost endeavors to accomplish the vacation of the Plat in which the Property described in Paragraph 1 hereof lies including any streets, alleys or public ways or places and that it will accomplish the said vacation unless the Supreme Court of Mississippi shall hold that such vacation can not be accomplished under Mississippi law. Seller agrees to bear the cost of the vacation of the Plat through the proceedings at the trial court level. In the event of an appeal, the cost of appeal will be borne by the Buyer. Seller agrees that it will, at any time and before the vacation of the plat, upon request of the Buyer, grant unto Buyer such permanent easement as Buyer may request for ingress and egress over and across the property on such route as Buyer may select.

5. **SOIL TESTS, SURVEYS, APPRAISALS, ETC.:** During the period of this Option, Buyer's representatives may go upon the land for the purpose of making soil tests, site studies, surveys and appraisals provided that Buyer shall indemnify Seller against any damages of whatever nature and shall repair any damage occurring as a result of such activities.

6. **TITLE AND CLOSING COSTS:** At the closing of the sale, Seller shall convey the property by general warranty deed, free and clear from all liens and encumbrances, but subject to wetlands/tidelands exceptions.

7. **RIGHTS TO ASSIGN:** The Buyer has the right to assign its rights under this Option.

8. NOTICES: All notices consents and other communications hereunder shall be in writing and shall be personally delivered or

mailed by registered or certified U.S. Mail, return receipt requested, postage prepaid at the following addresses: If to the Seller, Purcell Co., Inc., 4402 East Aloha Drive, Suite 3, Diamondhead, Mississippi 39525, Attention: Artis E. James, Jr., President; if to Buyer, Mississippi Gaming Corporation, 200 East Government Street, Suite 100, Pensacola, Florida 32501; or to any such other addresses as may be furnished by Seller or Buyer in writing.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year hereinabove written.

MISSISSIPPI GAMING CORPORATION, Buyer

BY: /s/ Charles H. Reddien
CHARLES H. REDDIEN,
President

ATTEST:

PURCELL CO., INC., Seller

/s/ Carl H. Joffe
CARL H. JOFFE
Secretary

BY. /s/ P. Holcomb Hector
P. HOLCOMB HECTOR
Vice President

STATE OF MISSISSIPPI
COUNTY OF HARRISON

Personally appeared before me, the undersigned authority in and for the said county and state, on this 19th day of June, 1993, within my jurisdiction, the within named P. Holcomb Hector and Carl H. Joffe, who acknowledged that they are the Vice President and Secretary, respectively, of Purcell Co., Inc., a Delaware corporation, and that for and on behalf of the said corporation, and as its act and deed they executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

/s/ Shelia M. Alexander
NOTARY PUBLIC

My Commission Expires:

2-24-95

STATE OF MISSISSIPPI
COUNTY OF HARRISON

Personally appeared before me, the undersigned authority in and for the said county and state, on this 19th day of June, 1993, within my jurisdiction, the within named Charles H. Reddien who acknowledged that he is the President of Mississippi Gaming Corporation, a Delaware corporation, and that for and on behalf of the said corporation, and as its act and deed he executed the

above and foregoing instrument, after first having been only duly authorized by said corporation so to do.

/s/ Shelia M. Alexander
NOTARY PUBLIC

My Commission Expires:

2-24-95

WILLIAM J. MANION
P.O. BOX 1776
SLIDELL, LA 70459
LA. BAR 9089
FAX 601-255-1129

ATTORNEY AT LAW
(504) 649-4000

NOTARY PUBLIC
(504) 833-0500

August 5, 1993

Judicial Council
United States Court of Appeals
Fifth Circuit
600 Camp Street
New Orleans, LA 70130

Attn: Honorable R.E. Windhorst, Jr.
Clerk of Court

To the Honorable Judges:

This is a formal Complaint against United States District Judge Walter J. Gex, III, Southern District of Mississippi, Biloxi Division, for engaging in the practice of law in violation of 28 U.S.C. § 454.

This is *NOT* a Complaint requesting judicial discipline pursuant to 28 U.S.C. § 372(c).

CHARGE

For a number of years, U.S. District Judge Walter J. Gex, III ("Judge Gex") has used P. O. Drawer 227, Biloxi, Mississippi 39533, for judicial and personal mailings. Recordation dated January 6, 1993 in Chancery Courthouse, Hancock County, Mississippi, Book 89, pgs. 589-612, inclusive (Exhibit 1), relative to an option granted to Purcell Co., Inc., who then assigned same to

Mississippi Gaming Corporation for the purpose of establishing a gambling casino in Diamondhead, Hancock County, Mississippi ("Diamondhead"), indicates notices relative to aforesaid transactions were addressed to "Sellers" (i.e., Gaynel Gex Boh, Joseph W. Gex, and Judge Gex) (Exhibit 2).

Mrs. Boh is a sister of Judge Gex; Joseph W. Gex, a brother of Judge Gex, practices law in Bay St. Louis, Mississippi.

Judge Gex lists his residence in South Central Bell Telephone Directory as 725 E. Washington Street, Biloxi, MS, which is also the address of the United States District Courthouse where Judge Gex presides.

It is agreed that threat of terrorism requires Judge Gex to assert maximum protection. Notwithstanding, the Option Agreement does not reflect Judge Gex as acting as agent in behalf of his sister and brother, nor does any "franking" privilege extend to Mrs. Boh and Mr. Joseph W. Gex for private use of P. O. Drawer 227, Biloxi, MS 39533. Penalty for private use of mails to avoid payment of fees and postage is $300.00 for each offense. The gravity of Judge Gex's misconduct in abusing his privilege and authority is manifest and inexcusable. The gravity of the offense is noticed by an issuance of the Clerk of Court discontinuing utilization of post office boxes for and by Judge Gex. (Exhibit 3) There has been no similar notice issued by the Clerk affecting continued use of post office boxes as to United States Senior Judge Dan M. Russell, Jr., Circuit Judge David C. Bramlette and U.S. Magistrate Judge John M. Roper.

It is submitted that Judge Gex abused his office and indulged in the private practice of law while a sitting judge for his personal interests and those of his sister and his brother.

DISCUSSION

Throughout the pleadings of Class Action No. S90-0094(R), United States District Court, Southern District of Mississippi (Biloxi), Judge Gex has been referred to as being harmonious with interests and financial purposes of the developer of Diamondhead, Purcell Co., Inc. ("Purcell").

Recordations reveal no reserved rights, privileges, immunities and preferences unto Gex Family Interests; nor do any warranty deeds reflect same in Conditions, Restrictions or Easements being set forth therein.

SUMMATION

Judge Gex cannot administer the law if he breaks the law. There is little case law on sitting judges indulging in the private practice of law. However, the right to contract belongs to every citizen, but when a citizen becomes a member of Congress all right to contract with his government is, by R.S. sec. 3739, denied him. The profession of law has been held a right of which one may not be deprived by legislation, but only by decree of court. *Ex parte Garland*, 1866, 4 Wall 333, 18 L.Ed. 366. When a lawyer becomes a federal judge, the law, by R.S. sec. 713, forbids him the right to use his property and practice his

profession. Such prohibitions are not restrictions of liberty or deprivation of property. They are the law's aids to public service. They make the public servant have an eye single to the public duty, voluntarily assumed, and in forbidding legislators, judges, and public carriers alike to act in a dual capacity the law but throws around them the time-proved safeguard of faithful service, that 'no man can serve two masters.' *U.S. v. Delaware & H Co.*, 1908, 164 F.215.

For the foregoing reasons, United States District Judge Walter J. Gex, III should be held guilty of a high misdemeanor. 28 U.S.C. § 454.

Respectfully submitted,

/s/ W. J. Manion
W. J. MANION
P. O. Box 1776
Slidell, LA 70459
(504) 649-4000
LA Bar 9089
Miss 40008

cc: Henry J. Guidry, Jr.
Henry C. Melius

Supreme Court, U.S.
FILED
SEP 13 1993
OFFICE OF THE CLERK

No. 93-251

In The

Supreme Court of the United States

October Term, 1993

HENRY J. GUIDRY, JR. and
HENRY C. MELIUS,

Petitioners,

versus

MISSISSIPPI UTILITY, INC., PETER J. CASANO, M.P. McLEAN, HOBART G. TRUESDELL, ARTIS E. JAMES, JR. and ABC INSURANCE COMPANY,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

VIRGIL G. GILLESPIE
Bar #: 4843
GILLESPIE & BLESSEY
Attorneys at Law
1719 Beach Boulevard #306
P.O. Box 1930
Biloxi, MS 39533
(601) 374-8441
Fax: 432-0800

Attorney for Respondents, M.P. McLean, Hobart G. Truesdell, and Artis E. James, Jr.

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

11 pp

COUNTER-STATEMENT OF THE QUESTION PRESENTED

The eight [8] questions presented by Guidry and Melius, the Petitioners, for review by the Court on Writ of Certiorari are inappropriate for review under Rule 10 of the Supreme Court Rules. They either do not relate to the issues that were before the Fifth Circuit or only marginally relate to such issues.

The issue before the Fifth Circuit dealt with the District Court's denial of class action certification. Guidry and Melius injected several red herrings, but that did not alter the nature of the matter in controversy or the issues presented for review.

The issues currently presented by the Petitioners appear to deal with some secret agenda regarding United States District Court Judge Walter J. Gex, III, who did not hear this case, was not a defendant, but who has undoubtedly ruffled some feathers [real or imaginary] as evidenced by Pages 36-75 of the Petition for Writ of Certiorari in which we encounter agreements and matters involving Judge Gex which are not the part of any record either in the District Court or in the Fifth Circuit Court of Appeals.

The real issue raised by Appellant's Petition for Writ of Certiorari is, "What should be done to the Petitioners or their attorney for filing this unwarranted, unprecedented, and uncalled for attack upon Judge Walter J. Gex, III?" The Court cannot allow itself to be used in the manner requested in the Petition for Writ of Certiorari.

COUNTER-STATEMENT OF THE QUESTION PRESENTED – Continued

The administration of justice is far too dignified to allow its perversion into an arena for the private agenda of disgruntled citizens.

LIST OF PARTIES

M.P. McLean
Hobart G. Truesdell
Artis E. James, Jr.
Defendants/Respondents
Represented by:
Virgil G. Gillespie
Gillespie & Blessey
1719 Beach Boulevard – Suite 306
Biloxi, Mississippi 39531

Mississippi Utility, Inc.
Peter J. Casano
Defendants/Respondents
Represented by:
Walter J. Phillips
P.O. Box 128
Bay St. Louis, Mississippi 39520

Henry J. Guidry, Jr.
Henry C. Melius
Plaintiffs/Petitioners
Represented by:
William J. Manion
P.O. Box 1776
Slidell, Louisiana 70459

TABLE OF CONTENTS

Page

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED i

LIST OF PARTIES iii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

COUNTER-STATEMENT OF THE CASE 2

SUMMARY OF THE ARGUMENT 3

ARGUMENT:

REASONS FOR DENYING THE WRIT 4

CONCLUSION 5

TABLE OF AUTHORITIES

Page(s)

RULES

U.S. Supreme Court Rule 8.2 5

U.S. Supreme Court Rule 10 ..... 3, 5

U.S. Supreme Court Rule 10.1 4

U.S. Supreme Court Rule 10.1(a) 4

U.S. Supreme Court Rule 42.2 5

U.S. Supreme Court Rule 43.1 5

FEDERAL RULES OF CIVIL PROCEDURE

Rule 23 3

OPINIONS BELOW

Opinions and Orders from the Courts below were omitted from the body of Appellant's Petition, but were included in Appellant's Appendix. Therefore, please direct your attention to:

CITATIONS PAGES

E.E. Jeansonne, et al. v. Mississippi Utility, Inc., et al., No. S90-0094(BR) (S.D. Miss. Feb. 7, 1992) (memorandum opinion denying class certification) ..... App. A 1-7

E.E. Jeansonne, et al. v. Mississippi Utility, Inc., et al., No. S90-0094(BR) (S.D. Miss. Feb. 27, 1992) (judgment granting plaintiffs opportunity to amend and go forward) ..... App. A 7-9

E.E. Jeansonne, et al. v. Mississippi Utility, Inc., et al., No. 92-7144 (5th Cir. May 12, 1992) (granting appellee's motion to dismiss) ..... App. A 10

E.E. Jeansonne, et al. v. Mississippi Utility, Inc., et al., No. S90-0094(BR) (S.D. Miss. July 13, 1992) (denying plaintiff's motion to vacate) ..... App. A 11

E.E. Jeansonne, et al. v. Mississippi Utility, Inc., et al., No. S90-0094(BR) (S.D. Miss. Sept. 25, 1992) (denying plaintiff's motion to reconsider) ..... App. A 14-17

E.E. Jeansonne, et al. v. Mississippi Utility, Inc., et al., No. S90-0094(BR) (S.D. Miss. Sept. 25, 1992) (dismissing certain plaintiffs and dismissing remaining plaintiffs with prejudice to proceed individually) ..... App. A 25-29

E.E. Jeansonne, et al. v. Mississippi Utility, Inc., et al., No. 92-7699 (5th Cir. May 21, 1993) (affirming S.D. Miss. decision) ..... App. A 34-35

COUNTER-STATEMENT OF THE CASE

This matter was originally initiated on February 16, 1990, by the filing of a Complaint by fifty-three [53] persons purporting to be the members of a class. The relief sought seems to involve fraud, breach of contract, and there is a demand for monetary damages, not in favor of the individual members of the purported class but rather in favor of an entity [not a party] known as the Diamondhead Water and Sewer District. The exact nature and make up of the class is uncertain. Not only are the members of the class not identified or defined, but the relief sought is not requested on behalf of the class but rather by way of awarding a cash settlement to a non-litigant and ordering eminent domain of property owned by parties also not made a party to the complaint. The prayer for relief contains a demand of $6,000,000.00 to be awarded to the Diamondhead Water and Sewer District; that Mr. Casano be repaid $1,000.00; that the Court allow someone [not identified] to institute eminent domain proceedings against property not specifically defined and owned by a person or persons not parties to the Complaint and not adequately defined. The only other relief was the prayer that Mr. Manion, the attorney, be awarded fifteen per cent [15%] as an attorney fee.

Numerous motions were filed throughout the proceeding which were obscure and unintelligible, with one requesting a referendum among the purported class to determine their objectives. The pleadings in this matter have not only been obscure, rambling, and disjointed, but state no cause of action cognizable by our jurisprudence and seek no relief which either the District or Appeals Court was able to afford. The purported class action

Plaintiffs failed to sustain their burden of proof regarding the existence of a class pursuant to Rule 23 of the *Federal Rules of Civil Procedure.*

On October 4, 1991, Appellant's Counsel filed a motion for leave to file a supplemental complaint and add defendants. [Record on Appeal, Volume 4, Page 975; Record Excerpt No. 15]. Counsel for Appellees McLean, Truesdell, and James agreed to the addition of parties. [Record on Appeal, Volume 6, Page 1086]. However, no order was ever presented to counsel or the Court to accomplish such addition.

The District Court entered a Memorandum Opinion of February 7, 1992, and an Order on February 27, 1992. This Order denied class certification and directed the Plaintiffs to amend and proceed with individual actions within twenty [20] days. Thereafter, the Plaintiffs attempted to appeal to the Fifth Circuit and the same was denied by Order entered May 12, 1992. App. A 10. The matter then came back to the District Court and after numerous conferences and additional pleadings and affidavits, a final Order was entered dismissing the action of the Plaintiffs. App. A 25-29. Plaintiffs appealed a second time to the Fifth Circuit which affirmed the District Court's dismissal on May 21, 1993. App. A 34-35.

SUMMARY OF ARGUMENT

Petition should be denied because Appellants wholly fail to state grounds upon which this Court has jurisdiction. Nothing in the Petition qualifies this case for a Writ of Certiorari under Supreme Court Rule 10.

ARGUMENT: REASONS FOR DENYING THE WRIT

The Petition fails to recite any special and important reasons for any departure from the accepted and usual course of judicial proceedings which call for an exercise of the Court's supervision.

The petition should be denied because it completely lacks any "special and important reasons" for the granting of it as required by this Court's Rule 10.1. There is no conflict between the Fifth Circuit's judgment, of which review is sought, and any other federal court of appeals. Nor was said judgment "so far departed from the accepted and usual course of judicial proceedings" as to call for this Court's intervention as required by Rule 10.1(a).

This was a simple case in which Petitioner's request for class certification was denied. There is nothing spectacular or unusual for both the District and Appeal Courts to deny class certification to a few individuals where they are both improper and unrepresentative of a pool of unwilling, yet maybe, Plaintiffs.

The Supreme Court is no place for Petitioners to institute new arguments, create fictitious fact situations, or malign the character and integrity of Federal District Court Judges, where these issues were not within the purview of the Courts below. The Petitioners present no genuine facts or law for review, only misstatements of reality in their "Statement of Issues" and "Argument". This is a matter best left to the lower courts' discretion. Granting a writ of certiorari in this case would be particularly inappropriate.

CONCLUSION

There is nothing in Guidry's and Melius' entire Petition that remotely satisfies the prerequisites outlined in this Court's Rule 10, which would permit review. Therefore, the following relief is requested:

1. Denial of Writ of Certiorari and affirmation of the Fifth Circuit Judgment.

2. Pursuant to this Court's Rule 8.2, Respondents request appropriate disciplinary action against W. J. Manion for conduct unbecoming a member of the bar or for failure to comply with the Rules of this Court.

3. Following this Court's Rule 43.1, Appellees request that costs be paid by Petitioners.

4. Under this Court's Rule 42.2, Appellees seek single or double costs from Appellants, as well as damages in an amount deemed appropriate by this Court, due to the frivolous nature of this Petition.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

VIRGIL G. GILLESPIE
MS Bar No. 4843
GILLESPIE & BLESSEY
1719 Beach Boulevard – Suite 306
Biloxi, Mississippi 39531
P.O. Box 1930
Biloxi, Mississippi 39533
(601) 374-8441

Attorney for
M.P. McLean, Hobart G. Truesdell, and Artis E. James, Jr.

Supreme Court, U.S.
FILED
SEP 27 1993
OFFICE OF THE CLERK

No. 93-251

In The

Supreme Court of the United States

October Term, 1993

HENRY J. GUIDRY, JR. and
HENRY C. MELIUS,

Petitioners,

versus

MISSISSIPPI UTILITY, INC., PETER J. CASANO, M. P. McLEAN, HOBART G. TRUESDELL, ARTIS E. JAMES, JR., ABC INSURANCE COMPANY,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITIONERS' REPLY BRIEF

WILLIAM JOSEPH MANION
P.O. Box 1776
Slidell, LA 70459
Telephone: (504) 649-4000

Attorney for Petitioners Henry J. Guidry, Jr. and Henry C. Melius

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

TABLE OF CONTENTS

Page

Reply and Objections to Respondents' Statement of the Case 1

Summary of Judgment Below 3

Argument 3

Conclusion 5

TABLE OF AUTHORITIES

CASES

Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194 (1988) 1

Lumbermen's Mut. Cas. Co. v. Rhodes, 403 F.2d 2 (10th Cir. 1968), *cert. denied*, 394 U.S. 965, 89 S.Ct. 1319, 22 L.Ed.2d 567 1

Purcell Co., Inc. v. Mississippi State Tax Commission, 569 So.2d 297 (Miss. 1990) 2

School Asbestos Litigation (In re), 977 F.2d 764 (1992) 1

Transit Cas. Co. v. Security Trust Co., 396 F.2d 803, *cert. denied*, 89 S.Ct. 635 (Ca. Fla. 1968) 3

OTHER AUTHORITIES

28 U.S.C. § 455 ..... 1, 3

28 U.S.C. § 636(c) 1

F.R.C.P. Rule 23, 28 U.S.C.A. 1

F.R.C.P. Rule 15, 28 U.S.C.A. 3

F.R.C.P. Rule 16(b), 28 U.S.C.A. 3

TABLE OF AUTHORITIES – Continued

Page

F.R.C.P. Rule 41(b), 28 U.S.C.A. 3

F.R.C.P. Rule 60(b)(2)(3)(6), 28 U.S.C.A. 4

REPLY AND OBJECTIONS TO RESPONDENTS' STATEMENT OF THE CASE

1. Since John M. Roper's reappointment as United States Magistrate Judge and unsuccessful quest for an appointment as United States District Judge was supported by Walter J. Gex, III, his disqualification must be viewed objectively. 28 U.S.C. § 455.[1]

2. Order of Reference dated May 15, 1990, pursuant to 28 U.S.C. § 636(c) (App. 76 and 77), was aborted by the Clerk of Court without written consent of parties on December 20, 1991 (App. 78), and litigation was reassigned to United States District Judge Bramlette prior to final judgment filed on September 25, 1992 (App. 25 and 78).

3. Addressing petitioners' failure to go forward after denial of class certification as required by F.R.C.P. Rule 23, 28 U.S.C.A.,[2] corporate entity Diamondhead Utility Co., Inc. ("Utility") was well known to Judge Roper as early as April 9, 1991 (App. 79). It is noted that all memorandua are filed directly with Judge Roper without circulation to opposing counsel (App. 82) and never released, but remains the property of Judge Roper or the Clerk of Court (App. 83).

On May 15, 1990, Judge Roper agreed to permit Utility to be a party defendant (App. 84 and 85). Petitioners

---

[1] *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 108 S.Ct. 2194 (1988); *School Asbestos Litigation (In re)*, 977 F.2d 764 (1992).

[2] *Lumbermen's Mut. Cas. Co. v. Rhodes*, 403 F.2d 2 (10th Cir. 1968), *cert. denied*, 394 U.S. 965, 89 S.Ct. 1319, 22 L.Ed.2d 567.

submitted an Order on October 4, 1991 (App. 18) for Judge's signature to amend Complaint designating Purcell Co., Inc., Utility and Diamondhead Utilities as party defendants. Mr. Gillespie informed Judge Roper that He (Mr. Gillespie) would sign an Order with Purcell only as a party defendant (App. 24). It is my understanding that Judges sign Orders – not counsel.

4. United States District Court may recognize and grant full faith and credit to Mississippi Court judgment provided Purcell, Diamondhead Utility Co., Inc. and Diamondhead Utilities are party defendants.[3]

5-8. *Walter J. Gex, III Factor.* (Undisclosed Easement Servitude.)

The law firm of Gex, Gex and Phillips ("Gex Firm") executed many legal services in and for Diamondhead developer prior to and after Walter J. Gex, III resigned from the Gex Firm and assumed a Federal Judgeship on February 27, 1986.

The issue is whether Gex family interest secretly retained easements for egress and ingress to property south of U.S. Interstate 10, Exit 16.

Petitioners filed a Memorandum on April 30, 1992 outlining status of litigation as of that date (App. 86). Pursuant to Local Rules, opposing counsels do not receive a copy of any Memorandum (App. 82 and 83). Simply stated, if Gex interests reserved certain easements

---

[3] *Purcell Co., Inc. v. Mississippi State Tax Commission*, 569 So.2d 297 (Miss. 1990).

in sale of Gex property to developer and, in turn, developer did not state this exclusion of certain easements reserved to Gex in warranty deed relative to sale, exchange or transfer of property to Diamondhead Country Club and Property Owners Association, Inc. ("POA") and others, land sales were deceptive, and fraud has occurred (App. 89 and 90).

SUMMARY OF JUDGMENT BELOW

United States Magistrate Judge John M. Roper should have disqualified himself. 28 U.S.C. § 455. Notwithstanding, all plaintiffs should have been dismissed from Class Action without prejudice. As to those going forward individually, amendment of Complaint to add party defendants should have been allowed.

Petitioners were faced with extraordinary circumstances in order to follow the Court's Scheduling Order to the detriment of clients. Petitioners, not the Court, are privileged to amend when authorized, and they shall designate party defendants. Dismissal of same can only be allowed after an evidentiary hearing on a Motion to Dismiss.[4]

ARGUMENT

Subsequent to final judgment, petitioners filed a Motion to Vacate Judgment on April 30, 1992 (Vol. 7 of

[4] FRCP Rule 15, 28 U.S.C.A.; FRCP Rule 16(b), 28 U.S.C.A.; FRCP Rule 41(b), 28 U.S.C.A.; *Transit Cas. Co. v. Security Trust Co.*, 396 F.2d 803, *cert. denied*, 89 S.Ct. 635 (Ca. Fla. 1968).

Record). FRCP Rule 60(b)(2)(3)(6), 28 U.S.C.A., which Motion was denied.

Allegations of misrepresentation of land sales contracts due to secret retained easements by Gex family interests to the detriment of developer and his vendees should have triggered an evidentiary hearing to avoid injustice and piecemeal litigation.

Examination of Condition No. 5 of POA Open Board Meeting held September 13, 1990 indicates that Gex family reserved easements necessary for access to and from Diamondhead property south of I-10, Exit 16. (App. 89, 90). The implication is plain. Upon conveyance of unitized property to developer, Gex family did not release said easements; and, developer sold property and assessed dues from property owners south of I-10, Exit 16. Developer in turn failed to indicate Gex reservations of easements in warranty deed representing land sales in Diamondhead, Hancock County, Mississippi ("Diamondhead"). Upon transfer of amenities to POA by developer, reservation of easements was undisclosed; and if disclosed by developer, was not made known to POA dues paying members.

It matters not that Walter J. Gex, III is now a United States District Judge. Prior thereto, he was in private practice of law, doing business with and performing legal services for the developer.

If an easement reservation can be kept secret for such a long time, it is reasonable that there are other secret matters and counterletters between developer and initial land owner sellers that have not been made known.

CONCLUSION

Judgment below should be reversed and litigation remanded with instructions for a new trial with designation of an out of state judge to hear this litigation.

Respectfully submitted,

WILLIAM JOSEPH MANION
P.O. Box 1776
Slidell, LA 70459
Telephone: (504) 649-4000

Attorney for Petitioners
Henry J. Guidry, Jr.
and Henry C. Melius

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

E.E. JEANSONNE, et al.	)	
vs.	)	Docket No. S90-0094(R)
MISSISSIPPI UTILITY, INC., et al	)	

ORDER OF REFERENCE

(Filed May 15, 1990)

IT IS HEREBY ORDERED that the above-captioned matter be referred to United States Magistrate John M. Roper for the conduct of all further proceedings and entry of judgment in accordance with 28 U.S.C. § 636(c) and the foregoing consent of the parties.

/s/ Dan M. Russell, Jr.
UNITED STATES
DISTRICT JUDGE

May 14, 1990
Date

Consent to Disposition of Civil Case
by a Magistrate (Appeal to Circuit)

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI

E.E. JEANSONNE, et al. Plaintiffs	)	Docket No. S90-0094(R)
vs.	)	
MISSISSIPPI UTILITY, INC., et al Defendant	)	

CONSENT TO PROCEED BEFORE A
UNITED STATES MAGISTRATE

(Filed May 9, 1990)

In accordance with the provisions of 28 U.S.C. § 636(c), the parties to the above-captioned civil matter hereby waive their right to proceed before a Judge of the United States District Court and consent to have a United States Magistrate conduct any and all further proceedings in the case (including the trial) and order the entry of a final judgment.

/s/ W. Manion W. J. MANION	Attorney for Class Action Plaintiffs
/s/ Virgil G. Gillespie	Attorney for Artis James, Hobart Truesdale and M.P. McLean
/s/ Walter J. Phillips	Attorney for Mississippi Utility, Inc. and Peter J. Casano

NOTE: Return this form to the Clerk of Court only if it has been executed by all parties to the case.

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
SOUTHERN DISTRICT OF MISSISSIPPI

MEMORANDUM

To: Attorneys of Record Date: 12-20-91

From: J. T. Noblin, Clerk

Subject: S90-0094(P)
Jeansonne
Vs.
Mississippi Utility, Inc.

Pursuant to the directive of the Court regarding the initial reassignment and distribution of cases to Judge David C. Bramlette, III, the captioned cause has now been reassigned to Judge Bramlette and the case number has been changed to:

S90-0094(Br)

Please indicate this reassignment for your file and utilize the new case number on subsequent pleadings and correspondence.

Thank you for your cooperation in this regard.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

E. E. JEANSONNE, ET AL Class Action Plaintiffs versus MISSISSIPPI UTILITY CO., INC., ET AL. Class Action Defendants	*	CIVIL ACTION NO. S90-0094(P) MAGISTRATE ROPER FILED 2-16-90 UNITED STATES MAGISTRATE April 09-91 RECEIVED

STATUS CONFERENCE MEMORANDUM

Answers filed by defendants indicated that Mr. Hobart G. Truesdell, II, defendant, was a member of Purcell Co., Inc. Board of Directors; and, as Operating Trustee of Purcell Trust 1 & 2, he was subject to the jurisdiction of the United States Bankruptcy Court, Southern District of New York. This Court granted a motion to continue without date Class Action proceedings, subject to classification of defendants' status in the bankruptcy court proceedings.

On February 16, 1990, a complaint for enrollment pro hac vice and for an order re-opening the McLean Industries, Inc. Chapter 11 bankruptcy proceeding was filed. The complaint was dismissed without an appearance or hearing, based on lack of subject matter jurisdiction as all defendants in the filed complaint were not debtors.

An intervention was filed on July 27, 1990 and dismissed for the same lack of subject matter jurisdiction, and a motion for sanctions was reserved by the Court.

A notice of appeal to the United States District Court, Southern District of New York, was timely filed.

Due to limited hours that the Bankruptcy Court record room is open due to lack of funds and necessary remodeling, duplication of records required to designate an appeal has been delayed, but that will be shortly remedied.

STATUS OF BANKRUPTCY APPEAL

The Bankruptcy Court has refused to "Investigate the *circumstances* surrounding the sale of Diamondhead Utility stock . . . since the stock was never the property of the debtors' estate, rather the Purcell stock was included in the debtors' estate." (Transcript of hearing held on October 11, 1990, Pages 25, 26, 27)

The Bankruptcy Court ordered liquidation of Purcell Co., Inc. ("Purcell") with transfer of all stock to Purcell Trust ("Trust"). The object of the liquidation is to allow for sale of Purcell's lots and property in the Diamondhead community, Hancock County, Mississippi, with dedication of the net sales to the Trust in and for the benefit of the McLean Industries bankruptcy Chapter 11 creditors.

In order to sell lots and property, adequate water and sewer services are required. *Purcell Co., Inc. v. Mississippi State Tax*, 569 So.2d 297 (Miss. Oct. 1990). Neither Purcell or Diamondhead Utility Co., Inc. ("Utility") furnished adequate water and sewer services as far back as 1985, and these deficiencies were never disclosed to purchasers of Diamondhead property.

Intervenors' position in the bankruptcy is that Diamondhead Water and Sewer District has borrowed in excess of $3.2 million to construct a safe sewerage system which Diamondhead property owners must repay. The payment of this bonded indebtedness to construct a sewer treatment plant in Diamondhead is an infusion of capital post-petition security interest after the Chapter 11 filing date sufficient to obtain equitable relief under provisions of 11 U.S.C. § 1129(b), (b)(2)(B)(ii); *In Re Henke*, 90 B.R. 451 (Bankr. MT 1988).

The Court is reminded that Purcell pays no dues to the Diamondhead Property Owners Association and pays no fees for water and sewer services until the vacant properties are sold.

In summation, the Diamondhead property owners have a security interest in the form of bonded indebtedness to build a sewer treatment plant, the cost of which was and is the obligation of the debtors in the bankruptcy action.

Respectfully submitted,

/s/ W. J. Manion
W. J. MANION,
Pro Hac Vice
P. O. Box 1776
Slidell, LA 70458
(504) 649-4000

No copies of this Memorandum
have been furnished to
opposing counsel

Excerpt from Court's Notice of Conference pursuant to Docket entry 117, page 926 of Record:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

****

CIVIL JURY AND NON-JURY
PRETRIAL/SETTLEMENT CONFERENCES
MONDAY, JULY 13, 1992
AND
TUESDAY, JULY 14, 1992

****

The following civil jury and non-jury cases in the Southern Division of this District are set for ***PRETRIAL/ SETTLEMENT CONFERENCE*** and will be heard before Judge David C. Bramlette and Judge John M. Roper on Monday, July 13, 1992, and Tuesday, July 14, 1992, beginning at 9:00 a.m. in the Federal Building, Courtroom No. 4, 725 Washington Loop, Biloxi, Mississippi. Please see the attached list for the time of your conference.

* * *

Counsel are instructed to submit to Judge Roper, P. O. Drawer 1164, Biloxi, MS 39533, with a copy to Judge Bramlette, P. O. Box 1389, Biloxi, MS 39533, on or before ***Monday, July 6, 1992***, a memorandum (3 page maximum) setting forth a brief explanation of the case, and a candid appraisal of the respective positions, including possible settlement figures. *This document is not to be exchanged and will be viewed only by the Court.* The memorandum will *not* become a part of the Court file and will be destroyed upon the exhaustion of settlement negotiations.

Found at Page 1312 of Record

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

E.E. JEANSONNE, ET AL PLAINTIFFS

VS. CIVIL ACTION NO. S90-0094(BR)

MISSISSIPPI UTILITY INC., ET AL DEFENDANTS

ORDER

(Filed Aug. 31, 1992)

This cause comes before the Court on motion of the Plaintiff for "release of correspondence". The Court, having reviewed the motion and attached affidavit, is of the opinion that the motion is not well taken and shall be denied. It is therefore,

ORDERED AND ADJUDGED, that the Plaintiffs' motion for "release of correspondence" be, and is hereby, denied.

SO ORDERED AND ADJUDGED, this the 31st day of August, 1992.

/s/ John M. Roper
UNITED STATES
MAGISTRATE JUDGE

Excerpts of Status Conference held May 9, 1990 found in Transcript filed in Volume #4 Docket Entry No. 91.

* * *

[p. 14] MR. MANION: Yeah, it's written here. They have it. They've got it. If it's a conflict of law then you have to go –

THE COURT: It's not this Court's decision. If they decide they've got it, they've got it until some higher court tells them they don't.

MR. MANION: Sure. All right, sir. Well, basically, I would like to have status quo until I get myself up there to go up there –

THE COURT: Well, I don't know what's planned. Is anything planned by either side?

You just heard you can dismiss as far as Mr. Phillips' clients are concerned, but I'm not sure that helps you any.

MR. MANION: Well, basically, I have a motion to implead Mississippi Utility – I'm sorry – Diamondhead Utility as an additional defendant and that hasn't been acted on by the Court yet. I have a motion before you and I'd like to serve – I'd like to complete that, get those answers back, and then be prepared for the 18th to go up and bring them a bouquet up there.

THE COURT: All right.

MR. MANION: Thank you, sir.

THE COURT: I don't know what else is going to happen now. I assume that – who represents Diamondhead [p. 15] Utility, who are they? Do you know – does anybody know?

MR. CASTANO: (Casano) Well, I'm not sure they're properly a defendant yet but Walter (Phillips) will represent them.

MR. MANION: Before or after, that's the thing. You've got them operating in two spans of time, one before they were sold and now it's a doing business as since Mr. Castano purchased it.

MR. CASTANO: (Casano) It's not doing business as, it's a corporation. It's the same intact as it was from time from the beginning.

THE COURT: The only question as whether or not they can be made a party is whether it's timely, and the court's probably going to allow it. Whether they're a proper party has nothing to do with whether they're made a party, they can always file a motion to dismiss.

MR. PHILLIPS: Well, sir, they have not been made a party yet.

THE COURT: All right. Well, if they are I will probably allow that amendment. But I don't know, I don't see where we're really going and accomplishing anything. You've got one defendant – three defendants who are going to oppose the motion to dismiss. There's got to be a formal hearing on that. You've got one who is not going to oppose it but you're going to bring in another party which seems to be a part of their operation at

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION (BILOXI)

E E. JEANSONNE, et al — Plaintiffs

versus — Civil Action No. S90-0094 (BR)

MISSISSIPPI UTILITY, INC., et al — Defendants

United States Magistrate Judge
April 30, 1992
RECEIVED

MEMORANDUM DUE ON OR BEFORE MAY 4, 1992

In response to your Judgment dated February 26, 1992, I was aware that it was necessary to amend and go forward on or before March 17, 1992. Your failure to sign Order to Amend Complaint, once authorized by your Minute Entry, was reversible error based on abuse of discretion standard.

A second Notice of Appeal to the United States Court of Appeals for the Fifth Circuit was filed on March 6, 1992 asserting aforesaid Judgment was final; and, if not, was interlocutory in nature, falling within the rarely granted exception of *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949).

Additionally, it was urged that your judgment of February 26, 1992 should be set aside if a reasonable person would have considered that your personal interest in the Class Action brings your impartiality into question. *Liljeberg v. Health Services Acquisition Corp.*, 108 S.Ct. 2194 (1988); *In Re Corrogated Container Antitrust Litigation*, 614 F.2d 958, 960-61 (5th Cir. 1980).

Even if the above was academic, current events have brought into focus the fact that the Class Action should never have been lodged in the Federal Courthouse, Biloxi, Mississippi, as long as Judge Gex was presiding therein and certainly not after September, 1990.

At certification of Class hearing, I directed your attention to the problems centered around the authority of Phase I property owners over others to no avail. You accepted Mr. Walter Phillips' persuasion. I have filed a Motion requesting an Order issue vacating your February 26, 1992 Judgment based on newly discovered evidence relative to null exchange of easements between Gex family and Diamondhead Country Club and Property Owners Association dated September 13, 1990. F.R.C.P., Rule 60(b)(2)(3)(6), 28 U.S.C.A.

Being domiciled in Louisiana, I first learned during early April, 1992 of this easement exchange from a conversation with Mr. Henry James Floyd, a Diamondhead Phase II property owner. Mr. Floyd has submitted an Affidavit on file with the United States Court of Appeals for the Fifth Circuit attesting to these facts.

With a null easement in hand, Gex family have proceeded to denude the area about the nursing home entrance to Gex Drive. This will ultimately be an environmental conflict.

The most serious misrepresentation and ultimate consequence of easement exchange is the realization that Diamondhead Properties, Inc., Diamondhead Corporation, and their successor, Purcell Co., Inc., never had perfected an easement to acquire ingress and egress to the Diamondhead property advertised and sold South of

the exit from U.S. Interstate 10 Highway; and, if a perfection occurred, said perfection was never conveyed to the Diamondhead Country Club and Property Owners Association.

There exists a consummate realization that this Class Action litigation has taken a turn and misdirection not anticipated when filed. It is not desirous that the judiciary be discredited. The best solution to defuse the circumstances existing is for this Court to recall its Judgment dated February 26, 1992 and authorize a change of venue out of this district.

I hope my comments have been constructive and accepted in good faith as written.

Respectfully submitted,

/s/ W. J. Manion
W. J. MANION
Pro Hac Vice
P. O. Box 1776
Slidell, LA 70459
(504) 649-4000
La. Bar No. 9089 4-27-92

WJM/dg
No Copies Issued

Excerpts from Plaintiffs' Motion To Vacate Judgement (F.R.C.P., Rule 60(b)(2)(3)(6), 28 U.S.C.A. filed 30 April, 1992 – Volume 7 of Record, page 1236 et seq., referring to Diamondhead Country Club and Property Owners Association Open Board Meeting dated 13 September 1990:

* * *

There is before the Board a request from the Walter Gex family that we grant them an entrance onto Gex Drive from their property located on the Northwest side of the interchange between the Century 21 office and the Episcopal Church. On 19 March 1986 a motion passed to allow no additional ingress or egress to Gex Drive.

Motion by O'Barr, seconded by Wood, that we recind the action passed by the Board on 19 March 1986 concerning ingress and egress on Gex Drive. All members present voting YES, proxy on file from Keen voting YES. Passed unanimously.

Motion by Wood, Seconded by Edwards, that we grant the easement based upon the conditions set forth by this Board subject to the acceptance of these conditions by the Gex Family. All members present voting YES, Proxies on file from Claggett and Keen voting YES. Passed unanimously.

Conditions set forth as follows:

1. they pay all costs of the entranceway and modification of neutral grounds.

2. Only one entraceway (opening) will be allowed.

3. Construction traffic and delivery trucks will use Jones Road until occupancy of the project.

4. 50 foot easement, for entranceway, beginning 650 feet South of the North boundary of the Gex property.

5. The Gex family will grant permanent easement to the POA for access to the POA property South of I-10.

6. These conditions and restrictions are to become part of the easement.

* * *

The meeting was then opened to questions from the floor. There was a great deal of discussion on the Gex Drive easement. Mr. Walter Gex was in attendance and presented his position, and answered questions.

Respectfully Submitted,

/s/ Brieriey A. Acker
Brieriey A. Acker
Secretary